TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 430.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

RUDOLPH W. ULRICI, GERHARD BENSBERG, AND CHAS. HOPPE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 15, 1881.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, at the March term, 1881, thereof, between the United States, plaintiff, and Rudolph W. Ulrici, Gerhard Bensberg and Charles Hoppe, defendants, a manifest error hath happened, to the great damage of the said United States, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri.
By A. P. SELBY, *Deputy.*

Allowed by—

SAMUEL TREAT, *Judge.*

b *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the circuit court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name, and affix the seal of said circuit court, at office in the city of St. Louis, this 4th day of October, A. D. 1881.

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *D. C.*

(Indorsed:) No. 1625. United States circuit court, eastern district of Missouri. United States vs. R. W. Ulrici et al. Writ of error to the circuit court of the U. S., east. district of Missouri.

c The United States of America to Rudolph W. Ulrici, Gerhard Bensberg, and Charles Hoppe, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the United States is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel Treat, judge of the district court of the United States for the eastern district of Missouri, this 24th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

SAMUEL TREAT,
Judge United States District Court, Eastern District of Missouri.

d UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I have executed this writ by delivering a certified copy thereof to John W. Noble, of the firm of Noble & Orrick, attorneys of record of the within-named Richard W. Ulrici, Gerhard Bensberg, and Charles Hoppe, at St. Louis, in said district, on the 23d day of June, A. D. 1881.

FELIX COSTE,
U. S. Marshal, E. D. M.,
By JAMES R. GEGGIE, *Deputy.*

Service, 2.00; 1 mile travel, .06—$2.06.

(Indorsed:) No. 1625. United States circuit court, east'r. district of Missouri. United States vs. R. W. Ulrici et al. Citation. Filed May 24, 1881. M. M. Price, clerk.

1 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the 25th day of February, A. D. 1880, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri a certain petition, in words and figures following, to wit:

Petition.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district, at the March term, A. D. 1880.

THE UNITED STATES, PLAINTIFF,
vs.
RUDOLPH W. ULRICI, GERHARD BENSBERG, Charles Hoppe, defendants.

2 The United States, plaintiff, complains of Rudolph W. Ulrici, Gerhard Bensberg, and Charles Hoppe, defendants, of a plea that

they render unto plaintiff the sum of forty-seven thousand dollars, lawful money of the United States, which they, and each of them, owe to and unjustly detain from plaintiff—

For that whereas, heretofore, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and seventy-five, said defendant Rudolph W. Ulrici as principal, and said defendants Gerhard Bensberg and Charles Hoppe as sureties, at the said eastern district of Missouri, executed and delivered to plaintiff their certain bond and writing obligatory, sealed with their seals and dated at St. Louis, Missouri, on the day and year last aforesaid, which said writing obligatory is filed herewith and marked "Exhibit A," whereby they became held and firmly bound unto plaintiff in the full and just sum of forty-seven thousand dollars, money of the United States, to the payment of which well and truly to be made, said defendants jointly and severally bound themselves,
3 their heirs, executors, and administrators firmly. That said writing obligatory was and is subject to the following conditions thereunder written, to wit:

"That if the above bounden principals, or either of them, or either of their heirs, executors, or administrators shall well and truly pay or cause to be paid unto the collector of internal revenue for the 1st collection district of Mo. the amount of taxes due and owing on the following described distilled spirits, to wit:

Date.	No. barrels.	Wine gallons.	Proof gallons.	Taxable gallons.	Serial number of packages.
April 5	33	1,450[2]	1,450.50	1,460	38858 to 38890
6	32	1,413[2]	1,413.50	1,423	38891 to 38922
7	22	1,005	1,527.60	1,527	38923 " 38944
8	23	1,060[2]	1,622.52	1,623	38945 " 38967
9	23	1,053[2]	1,548.61	1,561	38968 " 38990
12	33	1,467	1,467	1,475	39023 " 39055
13	23	1,047[2]	1,602.63	1,601	39056 " 39078
14	22	1,011[2]	1,527.30	1,524	39079 " 39100
15	23	1,051	1,555.48	1,558	39101 " 30123
16	33	1,454[2]	1,454.50	1,460	39124 " 39156
17	22	1,012[2]	1,549.07	1,548	39157 " 39178
20	23	1,005[2]	1,005.50	1,010	39212 " 39234
21	12	545[2]	818.25	819	39245 " 39256
22	32	1,406	1,406	1,415	39257 " 39288
24	32	1,453	1,453	1,463	39312 " 39343
4 27	33	1,487	1,487	1,497	39367 " 39399
28	22	1,003	1,524.56	1,525	39400 " 39421
29	5	228	228	230	39422 " 39426
30	23	1,044	1,503.36	1,508	39454 " 39476
Totals	471	21,199	26,144.38	26,223	23,600.70

which were entered for deposit in the distillery warehouse No. 4 of St. Louis, at St. Louis, in the 1st collection district of Missouri, during the month ending April, A. D. 1875, before such spirits shall be removed from such warehouse, and within one year from the date hereof, then this obligation shall be void, otherwise to remain in full force and virtue."

Plaintiff states that the spirits described in said writing obligatory, to wit, 26,223 taxable gallons were, during said month ending April 30th, A. D. 1875, entered for deposit in the said distillery warehouse No. four of St. Louis, at St. Louis, in the said first collection district of Missouri, upon each and every taxable gallon whereof a tax was then and there imposed by law of ninety cents, amounting in the aggregate to 23,600.70 dollars.

And assigning a breach of the condition of said writing obligatory plaintiff says that the said defendant Rudolph W. Ulrici, principal as aforesaid, did not before said spirits were removed from said warehouse, and within one year from the date of said writing obligatory, well and truly pay or cause to be paid unto the said collector of internal revenue for the first collection district of Missouri the amount of taxes due and owing on a large quantity of said spirits, to wit, twenty-five thousand six hundred and fifty-five taxable gallons thereof, to the damage of plaintiff in the sum of twenty-three thousand one hundred and eighty-nine $\frac{50}{100}$ dollars.

That by reason of the premises and the breach herein assigned plaintiff says that said writing obligatory hath become and is forfeited, and that plaintiff is entitled to have and recover of defendants the full penalty of said writing obligatory, to wit, the sum of forty-seven thousand dollars; yet defendants, though often requested so to do, have not as yet paid said sum, nor any part thereof; wherefore plaintiff asks judgment of defendants for said amount of forty-seven thousand dollars, interest, and costs.

WILLIAM H. BLISS,
Attorney of the United States for said East. Dist. of Missouri.

And afterwards, to wit, on the 25th day of February, A. D. 1880, the following summons was issued in said case, which, with the marshal's return endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

In the circuit court of the United States in and for said district.

The President of the United States of America to the marshal of the United States in and for said district, greeting:

You are hereby commanded to summon Rudolph W. Ulrici, Gerhard Bensberg, and Charles Hoppe, citizens of the State of Missouri, that they be and appear before the honorable circuit court of the United States in and for the eastern district of Missouri on the first day of the next term thereof, to be holden at the city of St. Louis, in and for said district, on the third Monday of March next, then and there to answer the complaint of the United States set forth in the petition filed in said court on the 25th day of February, A. D. eighteen hundred and eighty.

Hereof fail not, and have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 25th day of February, A. D. eighteen hundred and eighty.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk*,
By S. L. CRAWFORD, *Deputy*.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

I have executed this writ by delivering a copy thereof, together with a copy of the petition there attached, to the within named Charles Hoppo,

and by leaving a copy thereof at the usual place of abode of each of the within named Rudolph W. Ulrici and Gerhard Bensberg, with a member of the family of each, respectively, over the age of sixteen years; all done at St. Louis in said district on the 27th day of February, 1880.

H. W. LEFFINGWELL,
United States Marshal, Eastern District of Missouri,
By JAMES B. GEGGIE, *Deputy.*

Marshal's fees: Service at $2.00; mileage, miles, at 6 cents; total,

8 And afterwards, to wit, on the 5th day of April, A. D. 1880, the following answer of R. W. Ulrici was filed for record in said case, which said answer is in the words and figures following, to wit:

Answer of R. W. Ulrici.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of said United States in and for said district, March term, A. D. 1880.

UNITED STATES, PLAINTIFF,
vs.
RUDOLPH W. ULRICI ET AL., DEFENDANTS. } No. 1625.

Now come the defendant Rudolph W. Ulrici, and for answer to the petition of said United States, plaintiff, say it is not true said defendant Ulrici did not pay or cause to be paid any and all taxes due and owing on said spirits described in the petition, and defendant says the amount of taxes claimed were not and are not due in manner and form alleged.

Defendant denies said spirits or any part thereof were ever re-
9 moved from said warehouse or ever remained therein for the time alleged or required by said bond sued on, with the taxes unpaid thereon; and defendants deny the plaintiff has suffered any damage whatever in manner and form stated, and deny plaintiff is entitled to have and recover of defendant any sum whatever.

And for a further defense herein, defendant says that before said spirits described in said writing obligatory and in said petition mentioned were deposited in said warehouse as stated, and before said writing obligatory in plaintiff's petition set forth was delivered or executed by said Ulrici or this defendant, each and every gallon thereof had become and was forfeited to and had become the property of the plaintiff, by force of statutes of said plaintiff and the fraudulent acts of said Ulrici as a distiller, in the particulars in the information of said plaintiff brough' by it against said spirits, and hereinafter more particularly mentioned; and defendant says that after said spirits were deposited in said warehouse, and while they
yet therein, and within the year in said bond mentioned, that
10 is to say, on the 10th day of May, A. D. 1875, the plaintiff, acting by and through certain of its agents and officers, did seize and hold each and every gallon thereof as forfeited to said plaintiff under the provisions of section 3166, 3522, 3303, 3305, 3450, and 3453 of the Revised Statutes of the United States, and under other the provisions of the said statutes and the

acts amendatory thereof, and the laws of said United States, and that thereupon, in pursuance of said seizure, on the relation of said seizing officer and by plaintiff's attorney for said eastern district of Missouri, the plaintiff did file in your honorable court on the 4th day of June, A. D. 1875, an information against each and every gallon of said spirits, and alleging in the various articles of said information breaches of said several sections of the said statutes, by virtue and effect of which each and every gallon of said spirits became, as averred, and was the property of the plaintiff at the moment of the production of said spirits and each and every
11 gallon thereof, and before said bond was given by this defendant as aforesaid, and before said spirits or any part thereof were removed from the place where distilled to said warehouse named; and defendants say a warrant of arrest thereupon issued on said information, directed to the marshal of said district, and by virtue thereof said marshal did take into his custody and hold possession of said spirits until the date hereinafter mentioned as that upon which said spirits were sold by said marshal; that thereupon such proceedings were had in said cause of forfeiture on said information (which became and was a cause in your honorable court, No. 4509, and styled the United States of America, ex rel., &c., vs. 1,218 Barrels of Spirits et alia), that said cause being submitted to the court without the interven' of a jury, on June 7th, 1876, the court found the issues in favor of the plaintiff on all said articles in said information contained; and did then and there decree said spirits and every gallon thereof forfeited to plaintiff for said several causes alleged, and condemning
12 the same to answer the prayer of said information. Wherefore, as these defendants say, at the time of the execution of the said writing obligatory, the said spirits were, and for a long time prior thereto had been, the sole property and goods of the plaintiff itself, and that upon the same no taxes did ever become due which these defendants were under said bond bound to pay.

And defendant says the plaintiff because of the premises should not now be allowed to say defendants are liable to it for said pretended taxes; and should not be allowed to have and maintain its said pretended action against them.

And this defendant further answering, and for a further defense in this behalf, says that after the seizure of said spirits and information against the same as hereinbefore stated, and pending said litigation in said cause number 4509, hereinbefore specified, and while said spirits were in the sole custody of said marshal under process in said cause, it was in said cause, on motion of the plaintiff, on January 7th, 1876, by an interlocutory
13 decree of your honorable court ordered that said spirits and every part thereof should be sold by said marshal pending said litigation; and defendant says that in pursuance of said decree, under a writ of venditioni exponas to effect the same, to said marshal directed, said spirits and every part thereof were, on the 28th day of January, A. D. 1876, sold by said marshal to various persons and for more than enough to pay all the taxes alleged by plaintiff to exist at the time against said spirits, or that were as alleged imposed thereon by law. That afterwards, to wit, on said last-named date said marshal, in pursuance of said sale, did receive the price for said spirits, and, by authority of the plaintiff, applied sufficient of said price and sum so received, proceeds of said spirits, to pay, and did

pay to said collector of the first collection district of Missouri the amount of taxes alleged to exist on said spirits, and each and every gallon thereof, and the remainder did return into your honorable court for further
14 order, and did deliver said spirits to the various persons entitled to receive the same by virtue of said purchase tax paid, by means whereof defendant says the said taxes on said spirits were paid, and said bond sued on hath been and is discharged. Wherefore defendant says plaintiff ought not further to have and maintain its said action against these defendants.

And for a further defense herein, defendants say that from the time of the said sale hereinbefore last mentioned, title to the said spirits was in the plaintiff, and that from the time of the seizure of the said spirits to the said sale, the absolute and sole possession and control of said spirits were in plaintiff and its officers, and in the custody of your honorable court and its officers after said warrant of arrest was served as hereinbefore mentioned.

And defendants further say that the plaintiff herein was an actor against said spirits in said cause of seizure and forfeiture, and that as such the plaintiff might have proceeded at any time to have had said spirits
15 sold pending the litigation aforesaid, as perishable property, and that if any of said spirits perished or was lost, it was by the neglect and fault of the plaintiff of and concerning its own property, and that this defendant is not liable therefor under said bond sued on.

Wherefore defendant asks to be hence discharged, with costs.

NOBLE & ORRICK,
Attorneys for Defendants.

And afterwards, to wit, on the 5th day of April, A. D. 1880, the answer of Charles Hoppe and Gerhard Bensberg was filed for record in said cause; which said answer is in words and figures following, to wit:

Answer of Hoppe & Bensburg.

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of said United States in and for said district, March term, A. D. 1880.

16 UNITED STATES, PLAINTIFF,
vs.
RUDOLPH W. ULRICI ET AL., DEFENDANTS.

Now comes the defendants, Charles Hoppe & Gerhard Bensberg, and for answer to the petition of said United States, plaintiff, says it is not true said defendant Ulrici did not pay or cause to be paid any and all taxes due and owing on said spirits described in the petition; and defendant says the amount of taxes claimed were not and are not due in manner and form alleged.

Defendant denies said spirits or any part thereof were ever removed from said warehouse or ever remained therein for the time alleged or required by said bond sued on with the taxes unpaid thereon; and defend-

ant denies the plaintiff has suffered any damage whatever in manner and form stated, and denies plaintiff is entitled to have and recover of defendant any sum whatever.

And, for a further defense herein, defendant says that before said
17 spirits described in said writing obligatory and in said petition mentioned were deposited in said warehouse as stated, and before said writing obligatory in plaintiff's petition set forth was delivered or executed by said Ulrici or this defendant, each and every gallon thereof had become and was forfeited to and had become the property of the plaintiff by force of statutes of said plaintiff and the fraudulent acts of said Ulrici as a distiller, in the particulars in the information of said plaintiff brought by it against said spirits, and hereinafter more particularly mentioned, but which fraudulent acts of said Ulrici and said forfeiture were without the consent or knowledge of this defendant when said bond was made.

And defendant says that after said spirits were deposited in said warehouse, and while they were yet therein, and within the year in said bond mentioned, that is to say, on the 10th day of May, A. D. 1875, the plaintiff acting by and through certain of its agents and officers, did seize and hold each and every gallon thereof as forfeited to said plaintiff un-
18 der the provisions of sections 3166, 3257, 3303, 3305, 3452, and 3453 of the Revised Statutes of the United States and under other the provisions of the said statutes and the acts amendatory thereof and the laws of said United States; and that thereupon, in pursuance of said seizure, on the relation of said seizing officer and by plaintiff's attorney for said eastern district of Missouri, the plaintiff did file in your honorable court, on the 4th day of June, A. D. 1875, an information against each and every gallon of said spirits, and alleging in the various articles of said information breaches of said several sections of the said statutes, by virtue and effect of which each and every gallon of said spirits became, as averred, and was the property of the plaintiff at the moment of the production of said spirits and each and every gallon thereof, and before said bond was given by this defendant as aforesaid, and before said spirits or any part thereof were removed from the place where distilled to said warehouse named; and defendants say a warrant of arrest thereupon issued on
19 said information, directed to the marshal of said district, and by virtue thereof said marshal did take into his custody and hold possession of said spirits until the date hereinafter mentioned as that upon which said spirits were sold by said marshal; that thereupon such proceedings were had in said cause of forfeiture on said information (which became and was a cause in your honorable court No. 4509, and styled the United States of America ex rel., &c., vs. 1,218 Barrels of Spirits et alia); that said cause being submitted to the court without the intervention of a jury, on June 7th, 1876, the court found the issues in favor of the plaintiff on all said articles in said information contained; and did then and there decree said spirits and every gallon thereof forfeited to plaintiff for said several causes alleged, and condemning the same to answer the prayer of said information; wherefore, as these defendants say, at the time of the execution of the said writing obligatory, the said spirits were and for a long time prior thereto had been the sole property and goods of the plaintiff itself, and that upon the same no taxes did ever become due which
20 this defendant were under said bond bound to pay.

And defendant says the plaintiff because of the premises should not now be allowed to say defendant is liable to it for said pretended taxes, and should not be allowed to have and maintain its said pretended action against him.

And this defendant, further answering, and for a further defense in this behalf, says that after the seizure of said spirits and information against the same as hereinbefore stated, and pending said litigation in said cause number 4509 hereinbefore specified, and while said spirits were in the sole custody of said marshal, under process in said cause, it was in said cause, on motion of the plaintiff, on January 7th, 1876, by an interlocutory decree of your honorable court, ordered that said spirits, and every part thereof, should be sold by said marshal pending said litigation; and defendant says that in pursuance of said decree, under a writ of venditioni exponas, to effect the same, to said marshal directed, said spirits,

21 and every part thereof, were, on the 28th day of Janua'y, A. D. 1876, sold by said marshal to various persons, and for more than enough to pay all the taxes alleged by plaintiff to exist at the time against said spirits, or that were, as alleged, imposed thereon by law. That afterwards, to wit, on said last named date, said marshal, in pursuance of said sale, did receive the price for said spirits, and by authority of the plaintiff applied sufficient of said price and sum so received, proceeds of said spirits, to pay, and did pay, to said collector of the first collection district of Missouri the amount of taxes alleged to exist on said spirits, and each and every gallon thereof, and the remainder did return into your honorable court for further order, and did deliver said spirits to the various persons entitled to receive the same by virtue of said purchase tax paid, by means whereof, defendant says, the said taxes on said spirits were paid; and said bond sued on hath been and is discharged. Wherefore defendant says plaintiff ought not further to have and maintain its said action against these defendants.

22 And for a further defense herein defendants say that from the time of the said sale hereinbefore last mentioned the title to the said spirits was in the plaintiff, and that from the time of the seizure of the said spirits to the said sale the absolute and sole possession and control of said spirits were in plaintiff and its officers and in the custody of your honorable court and its officers after said warrant of arrest was served as hereinbefore mentioned.

And defendant further says that the plaintiff herein was an actor against said spirits in said cause of seizure and forfeiture, and that as such the plaintiff might have proceeded at any time to have had said spirits sold pending the litigation aforesaid as perishable property, and that if any of said spirits perished or was lost it was by the neglect and fault of the plaintiff of and concerning its own property, and that this defendant is not liable therefor under said bond sued on.

Wherefore defendant asks to be hence discharged with costs.

NOBLE & ORRICK,
Attorneys for Defendants.

23 And afterwards, to wit, on the 21st day of March, A. D. 1881, a demurrer to the answer of defendant Ulrici was filed for record in said case, which said demurrer is in words and figures following, to wit:

Demurrer to answer of Ulrici.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for the eastern district of Missouri. September term, A. D. 1880.

UNITED STATES, PLAINTIFF,
vs. No. 1625.
RUDOLPH W. ULRICI ET AL., DEFENDANTS.

And now comes the United States, plaintiff in the above-entitled cause, by William H. Bliss, attorney of said United States for the eastern district of Missouri, and demurs to all that part of the answer of defendant Rudolph W. Ulrici filed herein, commencing on the fifth line of the second page thereof, with the words "and for a further defense herein," and ending on the ninth line of the fifth page thereof with the words,
24 "its said pretended action against them," set up as and for a second defense to this action. Because said part of said answer set up as and for a second defense does not state facts sufficient in law to constitute a defense to this action to bar plaintiff by estopped or otherwise from having and maintaining this action in this:

1st. That the tax attached and the distiller's liability to pay the same arose under the law before a forfeiture could take place; the liability and obligation to pay was not discharged or in any way affected by the forfeiture, seizure, and condemnation under the information alleged, but remained unaffected thereby, when the bond sued on was given.

2nd. That the distiller was liable by law for tax upon the spirits produced at his distillery, irrespective of ownership, as soon as they came into existence as such.

The plea admits that the spirits were produced by Ulrici, the principal in the bond, as distiller, so that the tax attached to the spirits in question and the distiller became obligated to pay the same according to law,
25 forfeiture or no forfeiture, and irrespective of whether the forfeiture was before, at the time of, or after the tax attached under the law.

III. That the principal in the bond, said defendant Ulrici, cannot set up his fraud to relieve him from his liability to plaintiff under the bond.

IV. That said defendant Ulrici, principal in said bond, is estopped by the bond, being an instrument under seal, absolute and unconditional in its terms, from denying the matters and things stated and recited therein, and consequently from denying that the tax was due and owing on the spirits described, when the bond was given.

And said plaintiff, by said attorney, demurs also to all that part of said defendant Ulrici's answer filed herein, commencing on the tenth line of the fifth page thereof, "and these defendants," and ending on the last line but one on the sixth page with the words "said action against these defendants," set up as and for a third defense to this action, for the following reason, viz:

Because said part of said answer set up as and for a third defense
26 does not state facts sufficient in law to constitute a defence to this action in this:

I. That the alleged taxes paid were those paid from proceeds of sale, under decree of forfeiture, of property belonging to the Government, and

which is only payable in case of forfeiture and sale, w'ile those secured by and due under the bond sued on, are the taxes imposed in the spirits upon their production by the distiller and for which the law makes the distiller liable.

II. Because the tax alleged to have been paid was not the tax secured by the bond, nor was it paid by the distillers or any one for him.

III. Because said plea which alleges payment is inconsistent with the second plea aforesaid, which denies they owed any tax.

And said plaintiff, by said attorney, also demurs to all that part of the answer of said defendant, Rudolph W. Ulrici, filed herein, commencing on the last line of the sixth page thereof and ending in the last line but two of the text of page seventh, with the words "sued on," set out as and
27 for a fourth defence to this action for the following reasons, viz:

1st. The loss of forfeited spirits does not relieve the distiller from the payment of the tax accrued or due, the tax being payable independent of the continued existence of the spirits and of the forfeiture.

2nd. The plea is conditional and not responsive to the allegations of the declaration.

WILLIAM H. BLISS,
U. S. Att'y.

And afterwards, to wit, on the 21st day of March, A. D. 1881, there was filed for record in said cause a demurrer to the answer of Chas. Hoppe & Gerhard Bensberg, which demurrer is in words and figures following, to wit:

Demurrer to answer of Chas. Hoppe & Gerhard Bensberg.

In the United States circuit court for the eastern district of Missouri.
September term, A. D. 1880.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs. } 1625.
RUDOLPH W. ULRICI ET AL., DEFENDANTS.

28 And now come the United States, plaintiff in the above entitled cause, by William H. Bliss, attorney of said United States for the eastern district of Missouri, and demurs to all that part of the answer of defendant, Charles Hoppe & Gerhard Bensberg, filed herein, commencing on the fifth line of the second page thereof with the words, "and for a further defence herein," and ending on the ninth line of the fifth page thereof, with the words "its said pretended action against them," set up as and for a second defence to this action.

Because said part of said answer set up as and for a second defence does not state facts sufficient in law to constitute a defence to this action or to bar plaintiff by estopped or otherwise from having and maintaining this action, in this:

1st. That the tax attached and the distiller's liability to pay the same arose under the law before a forfeiture could take place: that the liability and obligation to pay was not discharged or in any way affected by the forfeiture, seizure, and condemnation under the information alleged, but remained unaffected thereby when the bond sued on was given, and that the liability of the defendant' surety to the plaintiff cannot be affected by
29 the deceit or concealment of his principal, or by the act of the law in view of which he will be presumed to have contracted.

2nd. That the distiller became liable by law for tax upon the spirits produced at his distillery, irrespective of ownership, as soon as they came into existence as such. The plea admits that the spirits were produced by Ulrici, the principal in the bond, as distiller, so that the tax attached to the spirits in question and the distiller became obliged to pay the same according to law, forfeiture or no forfeiture, and irrespective of whether the forfeiture occurred before, at the time of, or after the tax attached, and the liability of the answering surety to plaintiff cannot be affected by the deceit or concealment of the sureties' principal and codefendant, or by the act of the law in view of which he must be presumed to have contracted.

3rd. That the surety cannot set up the fraud of and violations of law by his principal, and his want of knowledge thereof and consent thereto, to relieve him from his liability to plaintiff under the bond.

4th. That the answering surety is estopped by the bond, being an instrument under seal, absolute and unconditional in its term, from
30 denying the matter and things stated and recited therein, and consequently from denying that the tax was due and owing on the spirits described, and that his principal was liable therefor when the bond was made.

And said plaintiff, by said attorney, demurs also to all that part of said defendant' Charles Hoppee & Gerhard & Bendsberg's answer filed herein, commencing on the tenth line of the fifth page thereof, "and these defendants," and ending on the last line but one on the sixth page, with the words, "said action against these defendants," set up as and for a third defence to this action, for the following reasons, viz:

Because said part of said answer set up as and for a third defence does not state facts sufficient in law to constitute a defence to this action, in this:

I. That the alleged taxes paid were those paid from proceeds of sale under decree of forfeiture of property belonging to the Government, and which are only payable in case of forfeiture and sale, while those secured by and due under the bond sued on are the taxes imposed on the spirits upon their production by the distiller, and for which the law makes the distiller liable.

31 II. Because the tax alleged to have been paid was not the tax secured by the bond, nor was it paid by the distiller or any one for him.

III. Because said plea which alleges payment is inconsistent with the second plea aforesaid, which denies they owed any tax.

And said plaintiff, by said attorney, also demurs to all that part of the answer of said defendant' Charles Hoppee & Gerhard Bensberg, filed herein, commencing on the last line of the sixth page thereof, and ending on the last line but two of the text of page seven, with the words "sued on," set up as and for a fourth defence to this action for the following reasons, viz:

1st. The loss of forfeited spirits does not relieve the distiller from the payment of the tax accrued or due, the tax being payable independent of the continued existence of the spirits and of the forfeiture.

2nd. The plea is conditional, and not responsive to the allegations of the declaration.

WILLIAM H. BLISS,
U. S. Att'y.

And afterwards, to wit, on the 8th day of April, A. D. 1881, the following further proceedings were had, and appear of record in said cause, to wit:

Stipulation.

UNITED STATES, PLAINTIFF, *vs.* RUDOLPH W. ULRICI, GERHARD BENSBERG, and Charles Hoppe, defendant.	1625.
UNITED STATES, PLAINTIFF, *vs.* RUDOLPH W. ULRICI, CHARLES HOPPE, AND Henry C. Harstack, defendants.	1626.
UNITED STATES, PLAINTIFF, *vs.* RUDOLPH W. ULRICI, HERMAN A. STEINECKE, Chas. Hoppe, and Gerhard Bensberg, defendants.	1627.
UNITED STATES, PLAINTIFF, *vs.* RUDOLPH W. ULRICI, CHARLES HOPPE, AND Henry C. Harstick, defendants.	1628.

Now comes the district attorney, on behalf of the United States, and also come the defendants in each of the above-entitled cases, and file stipulation in words and figures following, to wit: It is hereby stipulated and agreed in each of the foregoing cases that the same may be tried by the court on the issues made, without the intervention of a jury, a jury trial in either case being hereby now waived, without prejudice to a
33 writ of error; and it is hereby now further stipulated, in each of said several suits above-styled, that upon jud'ment rendered either party may prosecute a writ of error to the Supreme Court of the United States, in said named cause No. 1625, and the other suits and judgments therein shall abide the events of the proceedings in said cause taken up as aforesaid.

(Signed) C. G. B. DRUMMOND,
Asst. U. S. Att'y.

(Signed) NOBLE AND ORRICK,
Att'ys for Def'ts.

Also, on the same day the following further proceedings were had, and appear of record in said cause, to wit:

Judgment.

UNITED STATES, PLAINTIFF, *vs.* RUDOLPH W. ULRICI, GERHARD BENSBERG, and Charles Hoppe, defendants.	1625.

This day come the United States, by the district attorney, and the defendants, by Noble and Orrick, their attorneys, and thereupon this cause

thousand dollars, money of the United States, to which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this fifth day of May, A. D. 1875.

The condition of the foregoing obligation is such that if the above-bounden principals, or either of them, or either of their heirs, executors, or administrators, shall well and truly pay or cause to be paid unto the collector of internal revenue for the 1' collection district of Mo. the
39 amount of taxes due and owing on the following-described distilled spirits, to wit:

Date.	No. barrels.	Wine gallons.	Proof gallons.	Taxable gallons.	Serial numbers of packages.
April 5	33	1,450	1,450.50	1,460	38858 to 38890
6	32	1,413	1,413.50	1,423	38891 " 38922
7	22	1,005	1,527.60	1,527	38923 " 38944
8	23	1,060	1,622.52	1,622	38545 " 38967
9	23	1,053	1,548.61	1,551	38968 " 38990
12	33	1,467	1,467.—	1,475	39023 " 39055
13	23	1,047	1,602.63	1,601	39056 " 39078
14	22	1,011	1,527.30	1,524	39079 " 39100
15	23	1,051	1,555.48	1,558	39101 " 39123
16	33	1,454	1,454.50	1,466	39124 " 39156
17	22	1,012	1,549.07	1,548	39157 " 39178
20	23	1,005	1,005.50	1,016	39212 " 39234
21	12	545	818.25	819	39245 " 39256
22	32	1,406	1,406.—	1,415	39257 " 39288
24	32	1,453	1,453.	1,463	39312 " 39343
27	33	1,487	1,487.	1,497	39367 " 39399
28	22	1,003	1,524.56	1,525	39400 " 39421
29	5	228	228.	230	39422 " 39426
30	23	1,044	1,503.36	1,508	39454 " 39476
Total	471	21,199	26,144.38	26,223	$23,600 70

Which were entered for deposit in the distillery warehouse No. 4, of St. Louis, at St. Louis, in the 1st collection district of Missouri, during the month ending April, A. D. 1875, before such spirits shall be re-
40 moved from such warehouse, and within one year from the date hereof, then this obligation shall be void; otherwise to remain in full force and virtue.

RUDOLPH W. ULRICI. [SEAL.]
GEBHART BENSBERG. [SEAL.]
CHARLES HOPPE. [SEAL.]

Signed, sealed, and delivered in presence of—
THEO. F. CHILD.
R. H. MAYER.

STATE OF MISSOURI,
County of St. Louis, ss:

I hereby certify that on this 7th day of May, one thousand eight hundred and seventy-five, before me personally came Rudolph W. Ulrici and Gerhard Bensberg, and on the 8th day of May, 1875, came also Chas. Hoppe, known to me to be the individuals described in and who executed the above bond, and severally acknowledged that they executed the same.

THEO. F. CHILD,
Dep. Coll. 1 Dis. Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

Gerhard Bensberg, of St. Louis, county of St. Louis and State of Missouri, one of the sureties in the within bond, being duly sworn,
41 says he is a resident of St. Louis, in the State of Missouri; that he still owns the personal property and real estate described in his affidavit on Form 33, dated May, A. D. 1875, which has been deposited at the collector's office of the 1st district of Missouri, and a duplicate forwarded to the office of Internal Revenue at Washington, D. C., and is worth fifteen thousand dollars over and above all debts, dues, demands, and incumbrances whatever against him, besides property exempt by law from execution.

GERHARD BENSBERG.

Sworn to before me this 7th day of May, 1875.

THEO. F. CHILDS, [SEAL.]
Dep. Coll. 1 Dis. Mo.

STATE OF MISSOURI,
County of St. Louis, ss:

Charles Hoppe, of St. Louis, county of St. Louis and State of Missouri, one of the sureties in the within bond, being duly sworn, says he is a resident of St. Louis, in the State of Missouri; that he still owns the personal property and real estate described in his affidavit on Form
42 33, dated May 8th, A. D. 1875, which has been deposited at the collector's office of the first district of Missouri, and a duplicate forwarded to the office of Internal Revenue, at Washington, D. C., and is worth 47,000 dollars over and above all debts, dues, demands, and incumbrances against him, besides property exempt by law from execution.

CHARLES HOPPE.

Sworn to before me this 8th day of May, 1875.

THEO. F. CHILDS, [SEAL.]
Dep. Coll. 1 Dis. Mo.

And did further introduce testimony tending to prove that the part of said spirits in said bond specified and hereinafter shown have been seized by the United States were in the bonded warehouse mentioned in plaintiff's petition when said bond was given, and had been prior thereto manufactured by the defendant Ulrici at his distillery with which said warehouse was connected, and regularly removed from said distillery to said warehouse.

That all the spirits in said warehouse on the 10' day of May, A. D. 1875, including those packages of said spirits mentioned on said bond, sold by the marshal under order and decree of this circuit court
43 of the United States, made in a certain cause known as 4509, and particularly as shown by the records of the office of the collector of internal revenue for the first collection district of Missouri, afterwards introduced as herein set forth, had been seized by the United States for forfeiture because of violations of the internal-revenue laws by said Ulrici as distiller.

That the United States filed an information against the spirits included in said bond, which had been so seized, and against other property, in this circuit court of the United States, in said cause 4509, to enforce said forfeiture, and pending said proceedings said spirits included in said bond which had been seized were sold under an order of said circuit court by the United States marshal, and of the proceedings of said sale were purchased tax-paid stamps from the collector of internal revenue for the first collection district of Missouri and affixed to and cancelled on said packages of spirits seized to an amount sufficient to pay the taxes on the spirits, and the plaintiff further introduced in evidence from the books of the collector of internal revenue of the 1st collection district of Missouri the following:

44 *Daily record of entries and withdrawals of distilled spirits at the distillery warehouse No. 4 of R. W. Ulrici, of the 1st district of Mo., during the month of April,* 1875.

ENTRIES.

Day of entry.	No. of packages.	Serial number of packages.	Serial numbers warehouse stamps.	Wine gallons.	Proof gallons.	Taxable gallons.	Amount of tax.
April 1	33	38762-38794	743932-743964	1,515[2]	1,515.50	1,522	1,369 80
2	32	38795-826	743965-996	1,462[2]	1,462.50	1,470	1,323
3	31	38827-857	743997-400, 742801-27	1,424[2]	1,424.50	1,433	1,289 70
5	33	38858-890	742828-860	1,450[2]	1,450.50	1,460	1,314
6	32	38891-922	742861-892	1,413[2]	1,413.50	1,423	1,280 70
7	22	38923-944	742893-914	1,005	1,527.60	1,527	1,374 30
8	23	38945-967	742915-937	1,060[2]	1,622.52	1,623	1,460 70
9	23	38968-990	742938-960	1,053[2]	1,548.61	1,551	1,395 90
10	32	38991-39022	742961-992	1,464[2]	1,464.50	1,474	1,326 60
12	33	39023-55	742993-3025	1,467[2]	1,467	1,475	1,327 50
13	23	39056-78	743026-48	1,047[2]	1,602.63	1,601	1,440 90
14	22	39079-100	743049-70	1,011[2]	1,527.30	1,524	1,371 60
15	23	39101-123	743071-93	1,051	1,555.48	1,558	1,402 20
16	33	39124-156	743094-126	1,454[2]	1,454.50	1,466	1,319 40
17	22	39157-178	743127-148	1,0122	1,549.07	1,548	1,393 20
19	23	39179-201	743149-171	1,057	1,585.50	1,586	1,427 40
20	33	39202-234	743172-200-741201-4	1,443[2]	1,443.50	1,449	1,304 10
21	22	39235-256	741205-226	1,001[2]	1,502.25	1,504	1,353 60
22	32	39257-288	741227-258	1,406	1,406	1,415	1,273 50
23	23	39289-311	741259-281	1,047	1,549.56	1,549	1,394 10
24	32	39312-343	741282-313	1,453	1,453	1,463	1,316 70
26	23	39344-366	741314-336	1,044[2]	1,524.97	1,525	1,372 50
27	33	39367-399	741337-369	1,487	1,487	1,497	1,347 30
28	22	39400-421	741370-391	1,003	1,524.56	1,525	1,372 50
29	32	39422-453	741392-423	1,447	1,447	1,458	1,312 20
30	23	39454-476	741424-446	1,044	1,502.36	1,508	1,357 20
Total produced	715			32,327[2]	39,012.41	39,134	35,220 60
Add quantity in warehouse 1st day of month	741			33,779[2]	41,930.33	42,045	33,532 30
Total to be accounted for	1,456			66,107	80,942.74	81,179	68,752 90

45 *Daily record of entries and withdrawals of distilled spirits, &c.*—Continued.

WITHDRAWALS.

Day of withdrawal.	No. of packages.	Serial number packages.	Serial numbers tax paid or export stamps.	Wine, gallons.	Proof gallons.	Taxable gallons.	Amount of tax.
April 2	32	38795–38826	22137–22168	1,462[2]	1,462.50	1,470	1,323
2	33	38762–794	22104–136	1,515[2]	1,515.50	1,522	1,369 80
3	9	37178–186	9556–564	425	641.72	642	449 40
	21	38805–25	9707[89]–809	955[2]	1,433.25	1,432	1,002 40
	5	38054–58	22169–173	231[2]	232.50	233	209 70
	31	38827–857	22174–204	1,424[2]	1,424.50	1,433	1,289 70
5	6	37187–192	9565–570	282	425.80	426	298 20
6	15	38059–73	22205–219	689	689	690	621
8	12	38074–85	22220–231	543	543	548	493 20
13	9	32150–158	863753–761	397[2]	397.50	399	279 30
	15	37193–207	9608–621, 970812	707[2]	1,068.29	1,068	747 60
15	20	37208–227	9622–640, 970815	942[2]	1,423.14	1,422	995 40
17	10	37228–237	9641–49, 970814	471[2]	711.93	712	498 40
	20	38991–39010	22270–289	921[2]	921.50	926	833 40
19	19	37601–619	9650–668	880	1,355.20	1,358	950 60
20	10	39179–188	34813–821, 928	456	684	684	615 60
22	11	37620–630	9669–679	509[2]	784.63	787	550 90
	23	39189–211	22290–99, 34862, 967–72	1,039	1,339.50	1,341	1,206 90
23	23	39289–311	34937–57, 999–1000	1,047	1,549.56	1,549	1,394 10
24	12	39011–22	22300–311	543	543	548	493 20
	10	39235–244	35013–19, 1001–1003	456	684	685	616 50
27	23	39344–366	35175–197	1,044[2]	1,524.97	1,525	1,372 50
29	12	32000–11	863762–773	530	530	534	373 80
	8	36741–748	863774–781	359[2]	359.50	362	253 40
Total withdrawn	389			17,833[2]	22,243.49	22,296	18,238 00
Add quantity in warehouse last day of month	1,067			48,273[2]	58,699.25	58,883	50,514 90
Total accounted for	1,456			66,107	80,942.74	81,179	68,752 90

46 *Statement of spirits entered into warehouse of R. W. Ulrici's distillery No. 4, 1st district of Missouri, on the 29th and 30th days of April, 1875, and the payment of tax on the same as collated from the records in office of the collector of internal revenue, 1st district of Missouri:*

ENTERED INTO WAREHOUSE.

	No. of p'k'gs.	Serial numbers.	Wine galls.	Proof galls.	Tax. galls.	Am't tax.
1875.						
April 29	32	39422–39453	1,447	1,447	1,458	1,312 20
" 30	23	39454–39476	1,044	1,503.36	1,508	1,357 20
Total	55		2,491	2,950.36	2,966	2,669 40

WITHDRAWN AND TAX PAID BY ULRICI.

	No. of p'k'gs.	Serial numbers.	Wine galls.	Proof galls.	Tax galls.	Am't tax.
1875.						
May 3	5	39422–39426	228	228	230	207 00
" 5	27	39427–39453	1,219	1,219	1,228	1,105 20
Total	32		1,447	1,447	1,458	1,312 20

The remaining 23 packages were sold by the United States marshal.

The purchasers of these packages of spirits paid the U. S. tax thereon as shown in the following table:

47

Serial numbers.	Wine galls.	Proof galls.	Tax galls.	Purchasers.
39454	44	69.62	63	Metle & Kanne.
5	43⅞	62.20	62	Bernecker & Co.
6	46	65.32	65	McCaw & Miller.
7	46	64.80	65	Do.
8	46⅞	65.76	66	Do.
9	45	63.90	64	Do.
39460	46	64.40	64	Reinwender & Sellner.
1	45⅞	64.61	65	Tyra Hill & Co.
2	47⅞	67.92	68	Steinwender & Sellner.
3	46⅞	66.03	66	Do.
4	46	65.32	65	McCaw & Miller.
5	46	64.80	65	Do.
6	48	68.64	69	Gregory & Stugg.
7	46	66.24	66	Metle & Kanne.
8	46	66.24	66	Bernecker & Co.
9	45	63.45	63	Do.
39470	46⅞	66.03	66	Do.
1	46	65.32	65	Do.
2	46	65.78	66	Do.
3	45	64.80	65	Do.
4	46⅞	66.96	67	Do.
5	46	65.32	65	Do.
39476	46⅞	66.96	67	Do.
(23) Total..	1,056	1,503.64	1,503	

I certify the foregoing to be a true statement taken from the record.

DANE O'CONNOR,
Dep'y Coll. 1st Mo.

48 Which are admitted to have been certified by the marshal to the collector as having been sold under the order of said court and in the particulars stated, and that the tax paid was paid on the same at legal rates per gallon and the packages mentioned aforesaid were the only packages of spirits so warehoused, not regularly withdrawn, and tax paid by the distiller previous to said seizure. Plaintiff further introduced testimony tending to show that the only authority of the marshal under said certificate to the collector to obtain said stamps and to affix and cancel the same was under said orders of the court and sections of the U. S. Rev. Stat. numbered 3334 and 3458, and that the stamps were issued by the collector under the authority of said sections only, and that the taxes paid out of said proceeds of sale were the only taxes paid; and the plaintiff rested.

And thereupon the defendants, to sustain the issue on their part to be sustained, introduced in evidence all the record in a certain cause of forfeiture No. 4509 of this honorable court, brought on information by the United States against 1,218 Barrels of Spirits et alia and all the entries, writs, returns, papers, and documents filed or lodged in said cause,
49 including the final distribution and receipts for money distributed, which were admitted without objection.

The said bill of exceptions also calls for the following records:

50 At court, June 4, 1875.

THE UNITED STATES EX REL., &c., } 554.
vs.
1,218 BARRELS SPIRITS ET ALIA. }

This day comes David P. Dyer, esq., attorney of the United States for the eastern district of Missouri, and files an information herein, and on motion it is ordered that a warrant of arrest and monition issue, returnable the first Monday, the 3d day of July next.

51 *Information.—Filed June 4th*, 1875.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of said United States in and for said district.

To the honorable Samuel Treat, judge of said court:

Now comes David P. Dyer, attorney of the United States for said district, and in his own proper person, sueing on behalf of said United States, on the information of Lucian Hawley, supervisor of internal revenue, specially authorized as hereinafter set forth, presents this his information against—

2 sets of boilers, each 5 double-tube boilers.
1 line of iron shafting.
1 lot coal, about 12 tons.
3 sets connecting gear.
2 iron water-pipes, 3 inch.
5 fire-pokers.
1 lot iron grate-bars.
1 lot rubber hose (50 feet).
3 sledge hammers.
2 shovels.
2 single-cylinder engines.
2 sets gearing for engin's.
1 broad belt.
4 narrow belts.
1 copper oil-holder.
1 doctor engine.
52 1 steam-pump for water.
1 blacksmith's vise.
1 blacksmith's anvil.
1 blacksmith bellows.
1 lot blacksmith tools.
1 roll lamp-wick.
11 iron steam-pipes.
1 copper beer pipe.
75 feet rubber hose (small).
2 iron water-pipes

4 high-wine pipes.
1 low-wine pipe.
1 lot *in*gine tools, packing, &c.
1 large copper still.
1 spirit receiver.
1 small wood still.
2 4-inch water-pipes.
2 beer wells.
2 beer pipes.
1 beer trough.
1 force-pump.
5 water-pipes.
1 line of shafting.
1 set of connecting pulleys.
1 alcohol column.
1 alcohol column (small).
1 large wood still.
1 large wood worm-tub.
1 high-wine tub, 86 gallons.
53 2 low-wine tubs, 198 & 270 gallons ea.
8 high-wine pipes.
2 seperators.
1 low-wine pipe.
5 water-pipes.
1 lot rubber hose, about 125 feet 2 inch.
3 large lanterns.
1 lot tools, paints, &c.
1 spirit cistern for alcohol column.
1 small worm tub.
1 small worm tub.
1 large water tub.
4 water-pipes.
2 worm tubs and worms.
1 wood still.
262 bags of corn.
3 barrels of lime.
1 grindstone.
4 broad belts.
3 sets of pulleys.
1 set of gearing, extra large.
5 grain elevators.
1 elevator bin.
1 lot of old iron.
1 truck (hand).
1 hand-pump.
2 steam-pipes.
4 sets of burrs.
1 lot of mill-picks, about 24.
54 3 lots of old belting.
4 cogwheels, disconnected.
1 crane.

1 large worm-tub and worm.
1 wood doubler.
1 beer heater.
1 wood still, large.
3 large iron beer pipes.
2 low-wine pipes.
7 water-pipes.
1 lot corn bags.
1 large rope and pulleys.
3 lines of shafting.
2 sets of gearing.
1 turning lathe.
1 bin of corn, about 200 bushels.
1 low-wine still, 270 gallons.
4 lines of shafting.
1 screening mill.
1 lot old rope.
4 belts and pulleys.
2 fanning mills.
7 sets of gearing.
1 sifter.
4 sets of gearing.
4 bands and pulleys.
1 grain screen.
1 line of shafting.
1 set of gearing.
1 hopper and steelyards.
1 small Fairbanks scale.
2 lots of meal bags.
1 meal cistern.
2 meal conductors.
2 large water-tanks.
1 lot large copper pipes.
5 iron water-pipes.
3 meal tubs.
1 blower.
2 copper worms (small).
6 water-pipes (large).
1 hot-water tub.
1 6-inch copper pipe, about 30 feet.
1 line of shafting.
4 sets of gearing.
1 steam-pump.
3 small mash tubs (for yeast).
8 yeast tubs.
3 line water-pipes.
2 line steam-pipes.
16 large fermenting tubs.
4 large vats for spirit beer.
1 refrigerator, containing 3 copper yeast retorts.
5 copper kettles.

5 wooden tubs.
1 copper yeast retort.
2 fermenting tubs.
1 lot rubber-hose pipe.
56 1 large fermenting tub.
4 small fermenting tubs.
2 small fermenting tubs.
4 receiving cisterns, spent pipes & branches.
358 barrels spirits high wines.
1 old sleigh.
1 lot empty tubs (3), old.
237 barrels spirits high wines.
1 lot staves and hoops.
1 coal stove.
444 barrels high wines.
1 governor.
1 cast-iron band wheel.
1 lot machine gearing.
1 cast-iron band wheel, small.
3 blowers.
179 barrels high wines.
90 empty barrels.
49 empty barrels.
40 empty barrels.
1 lot cooper's tools.
1 steam-pump & gearing.
1 heavy wagon.
1 platform scale, set in the ground.
3 desks.
1 lounge.
5 wood-bottom chairs.
8 small pictures.
1 small clock.

57 Also the following-described lot or tract of land, with buildings thereon, situate in block #42, in said city of St. Louis, State of Missouri, being the distillery and distillery premises of Rudolph W. Ulrici, on the south side of Cedar street, in block No. 42, commencing east of private alley 74 feet 6 inches front by 118 feet deep; thence east to Main street; thence south to Mulberry; thence westward to Second street; thence north 120 feet to Eberle. The 74 feet 6 inches are owned by Rudolph W. Ulrici, as well as the improvement thereon, and the adjoining buildings east thereof, which constitute what is known as the Ulrici distillery. In a cause of seizure and forfeiture, under sections 3166, 3257, 3303, 3305, 3450, and 3453 of the Revised Statutes of the United States, and also under the acts amendatory to the same; and thereupon propounds and gives said judge to understand and be informed:

First. That Lucian Hawley, an officer of internal revenue of the United States, to wit, supervisor of internal revenue, specially authorized by the Commissioner of Internal Revenue of the United States to seize the same,

hath seized and yet holds in his possession and custody the prop-
58 erty above described, as forfeited to the United States under the provisions of the Revised Statutes of the United States and said acts aforesaid, for the causes hereinafter set forth; that said seizure was made on the tenth day of May, A. D. 1875, on land, at said eastern district of Missouri; and that proceedings to enforce said forfeiture have been commenced by said Lucian Hawley within twenty days after said seizure.

2d. That heretofore, to wit, on the first day of March, A. D. 1873, at the eastern district of Missouri aforesaid, and in the distillery of Rudolph W. Ulrici, situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, the said Rudolph W. Ulrici being then and there engaged in carrying on the business of a distiller, there was found in the possession, custody, and within the control of the said Rudolph W. Ulrici, distiller as aforesaid, a large quantity, to wit, five hundred gallons, of proof spirits, on which said proof spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had not then and there first been paid, for the purpose, on the part of the said Rudolph W. Ulrici, of being sold and removed by him, the said Ru-
59 dolph W. Ulrici, in fraud of the internal-revenue laws of the said United States, to wit, the act and provisions of the Revised Statutes aforesaid, and with the intent and design by him, the said Rudolph W. Ulrici, to avoid the payment of said tax. That all the property in this information described, except that mentioned in this article, is tools, implements, instruments, raw materials, and personal property, found in the possession of the said Rudolph W. Ulrici, who was then and there owner of the same, in the said distillery, and in the yard and enclosure containing the same, at the time the same was seized as aforesaid, with the intent and for the purpose in this article hereinbefore set forth, contrary to the form of the statutes of the United States in such case made and provided, whereby and by force of said statutes the said property became and is forfeited to the uses in said statutes specified.

3d. That heretofore, to wit, on the first day of September, A. D. 1873, at the eastern district of Missouri aforesaid, and in the distillery of Rudolph W. Ulrici, situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, the said Rudolph W. Ulrici being
60 then and there engaged in carrying on the *the* business of a distiller, there was found in the possession, custody, and within the control of the said Rudolph W. Ulrici, distiller as aforesaid, a large quantity, to wit, five hundred gallons of proof spirits, on which said proof spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had not then and there first been paid, for the purpose, on the part of the said Rudolph W. Ulrici, of being sold and removed by him, the said Rudolph W. Ulrici, in fraud of the internal-revenue laws of the said United States, to wit, the act and provisions of the Revised Statutes aforesaid, and with the intent and design by him, the said Rudolph W. Ulrici, to avoid the payment of said tax. That all the property in this information described, except that mentioned in this article, is tools, implements, instruments, raw material, and personal property found in the possession of the said Rudolph W. Ulrici, who was then and there owner of the same, in the said distillery, and in the yard and enclosure containing the same, at the time the same was seized as aforesaid,

with the intent and for the purpose in this article hereinbefore
61 set forth, contrary to the form of the statutes of the United States in such case made and provided, whereby and by force of said statutes the said property became and is forfeited to the uses in said statutes specified.

4th. That heretofore, to wit, on the first day of March, A. D. 1874, at the eastern district of Missouri aforesaid, and in the distillery of Rudolph W. Ulrici, situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, the said Rudolph W. Ulrici being then and there engaged in carrying on the business of a distiller, there was found in the possession, custody, and within the control of the said Rudolph W. Ulrici, distiller as aforesaid, a large quantity, to wit, five hundred gallons of proof spirits, on which said proof spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had not then and there first been paid, for the purpose on the part of the said Rudolph W. Ulrici of being sold and removed by him, the said Rudolph W. Ulrici, in fraud of the internal-revenue laws of the said United States, to wit, the act and provisions of the Revised Statutes aforesaid, and
62 with the intent and design by him, the said Rudolph W. Ulrici, to avoid the payment of said tax. That all the property in this information described, except that mentioned in this article, is tools, implements, instruments, raw materials, and personal property found in the possession of the said Rudolph W. Ulrici, who was then and there owner of the same in the said distillery, and in the yard and enclosure containing the same at the time the same was seized as aforesaid, with the intent and for the purpose in this article hereinbefore set forth, contrary to the form of the statutes of the United States in such case made and provided, whereby and by force of said statutes the said property became and is forfeited to the uses in said statutes specified.

5th. That heretofore, to wit, on the first day of December, A. D. 1874, at the eastern district of Missouri aforesaid, and in the distillery of Rudolph W. Ulrici, situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, being then and there engaged in carrying on the business of a distiller, there was found in the possession, custody, and within the control of the said Rudolph W. Ulrici, distiller as
63 aforesaid, a large quantity, to wit, five hundred gallons of proof spirits, on which said proof spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had not then and there first been paid, for the purpose, on the part of the said Rudolph W. Ulrici, of being sold and removed by him, the said Rudolph W. Ulrici, in fraud of the internal-revenue laws of the said United States, to wit, the act and provisions of the Revised Statutes aforesaid, and with the intent and design by him, the said Rudolph W. Ulrici, to avoid the payment of said tax. That all the property in this information described, except that mentioned in this article, is tools, implements, instruments, raw materials, and personal property found in the possession of the said Rudolph W. Ulrici, who was then and there owner of the same, in the said distillery and in the yard and enclosure containing the same, at the time the same was seized as aforesaid, with the intent and for the purpose in this article hereinbefore set forth, contrary to the form of the statutes of the United States in such case made and provided; whereby,

and by force of said statutes the said property became and is forfeited to the uses in said statutes specified.

64 6th. That heretofore, to wit, on the tenth day of May, A. D. 1875, at the eastern district of Missouri aforesaid, and in the distillery of Rudolph W. Ulrici, situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, the said Rudolph W. Ulrici, being then and there engaged in carrying on the business of a distiller, there was found in the possession, custody, and within the control of the said Rudolph W. Ulrici, distiller as aforesaid, a large quantity, to wit, eighty-four thousand and forty-two gallons of proof spirits, on which said proof spirits there was then and there imposed by law and internal-revenue tax of the United States, which said tax had not then and there first been paid for the purpose, on the part of the said Rudolph W. Ulrici, of being sold and removed by him, the said Rudolph W. Ulrici, in fraud of the internal-revenue laws of the said United States, to wit, the act and provisions of the Revised Statutes aforesaid, and with the intent and design by him, the said Rudolph W. Ulrici, to avoid the payment of said tax. That all the property in this information described, except that mentioned in this article, is tools, implements, instruments, raw materials, and

65 personal property found in the possession of the said Rudolph W. Ulrici, who was then and there owner of the same, in the said distillery, and in the yard and enclosure containing the same, at the time the same was seized as aforesaid, with the intent and for the purpose in this article hereinbefore set forth, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of said statutes, the said property became and is forfeited to the uses in said statutes specified.

7th. That heretofore, to wit, on the first day of May, A. D. 1873, at the eastern district of Missouri aforesaid, the said Rudolph W. Ulrici, being then and there engaged in carrying on the business of a distiller at the distillery, situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, did unlawfully remove and cause to be removed from the said distillery one thousand gallons of distilled spirits theretofore produced by him, the said Rudolph W. Ulrici, at the said distillery, upon which said spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had

66 not then and there first been paid, and did then and there defraud the United States of the said tax upon the said distilled spirits.

That the distillery and also all the distilling apparatus in this information first specified were then and there used by him, the said Rudolph W. Ulrici, and the said spirits in this information first specified being distilled spirits, and all the corn in this information first specified being raw material for the production of distilled spirits, were found in the distillery and on the distillery premises of him, the said Rudolph W. Ulrici, the said Rudolph W. Ulrici being then and there owner of the same, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of said statutes, the said property in this article mentioned became and is forfeited to the uses in said statutes specified.

8th. That heretofore, to wit, on the first day of September, A. D. 1873, at the eastern district of Missouri aforesaid, the said Rudolph W. Ulrici,

being then and there engaged in carrying on the business of a distiller at the distillery, situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, did unlawfully remove and cause to
67 be removed from the said distillery one thousand gallons of distilled spirits theretofore produced by him, the said Rudolph W. Ulrici, at the said distillery, upon which said spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had not then and there first been paid, and did then and there defraud the United States of the said tax upon the said distilled spirits.

That the distillery and also all the distilling apparatus in this information first specified were then and there used by him, the said Rudolph W. Ulrici, and the said spirits in this information first specified being distilled spirits, and all the corn in this information first specified being raw materials for the production of distilled spirits, were found in the distillery and on the distillery premises of him, the said Rudolph W. Ulrici, the said Rudolph W. Ulrici being then and there owner of the same, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of said statutes, the said property in this article mentioned became and is forfeited to the uses in said statutes specified.

68 9th. That heretofore, to wit, on the first day of May, A. D. 1874, at the eastern district of Missouri aforesaid, the said Rudolph W. Ulrici being then and there engaged in carrying on the business of a distiller at the distillery situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, did unlawfully remove and cause to be removed from the said distillery, one thousand gallons of distilled spirits theretofore produced by him, the said Rudolph W. Ulrici, at the said distillery, upon which said spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had not then and there first been paid, and did then and there defraud the United States of the said tax upon the said distilled spirits.

That the distillery and also all the distilling apparatus in this information first specified were then and there used by him, the said Rudolph W. Ulrici and the said spirits in this information first specified being distilled spirits and all the corn in this information first specified being raw materials for the production of distilled spirits, were found in the distillery and on the distillery premises of him, the said Rudolph W.
69 Ulrici, the said Rudolph W. Ulrici being then and there owner of the same, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of said statutes, the said property in this article mentioned became and is forfeited to the uses in said statutes specified.

10th. That heretofore to wit, on the first day of December, A. D. 1874, at the eastern district of Missouri aforesaid, the said Rudolph W. Ulrici, being then and there engaged in carrying on the business of a distiller at the distillery situate at southwest corner of Cedar street and Main street, in the city of St. Louis, did unlawfully remove and cause to be removed from the said distillery one thousand gallons of distilled spirits theretofore produced by him, the said Rudolph W. Ulrici, at the said distillery, upon which said spirits there was then and there imposed by law an internal-revenue tax of the United States, which said tax had not then and

there first been paid, and did then and there defraud the United States of the said tax upon the said distilled spirits.

That the distillery and also all the distilling apparatusin this information first specified, were then and there used by him, the said Ru-
70 dolph W. Ulrici, and the said spirits in this information first specified, being distilled spirits, and all corn in this information first specified being raw materials for the production of distilled spirits, were found in the distillery and on the distillery premises of him, the said Rudolph W. Ulrici, the said Rudolph W. Ulrici being then and there owner of the same, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of said statutes, the said property in this article mentioned became and is forfeited to the uses in said statutes specified.

11th. That heretofore, to wit, on the first day of May, A. D. 1875, at the eastern district of Missouri aforesaid, the said Rudolph W. Ulrici, being then and there engaged in carrying on the business of a distiller, at the distillery situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, did unlawfully remove and cause to be removed from the said distillery one thousand gallons of distilled spirits theretofore produced by him, the said Rudolph W. Ulrici, at the said distillery, upon which said spirits there was then and there imposed
71 by law an internal-revenue tax of the United States, which said tax had not then and there first been paid, and did then and there defraud the United States of the said tax upon the said distilled spirits. That the distillery, and also all the distillery apparatus in this information first specified were then and there used by him, the said Rudolph W. Ulrici, and the said spirits in this information first specified being distilled spirits, and all the corn in this information first specified being raw materials for the production of distilled spirits, were found in the distillery and on the distillery premises of him, the said Rudolph W. Ulrici, he, the said Rudolph W. Ulrici, being then and there owner of the same, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of said statutes, the said property in this article mentioned became and is forfeited to the uses in said statutes specified.

12th. That heretofore, to wit, between the first day of January, A. D. 1873, and the tenth day of May, A. D. 1875, at the eastern district of Missouri aforesaid, the said Rudolph W. Ulrici, being then and
72 there a person making and distilling spirits at the distillery situate at the southwest corner of Cedar street and Main street, in the city of St. Louis, within said district, and then and there owning a certain still, and certain boilers and other vessels used for the purpose of distilling spirits, and then and there having such still, boilers, and other vessels so used, under his superintendence as owner thereof, and then and there using such still, boilers, and other vessels, was required by law from day to day during said period to make and cause to be made, in a certain book or books, to be kept by him in such form as the Commissioner of Internal Revenue of the United States had theretofore prescribed, a true and exact entry of the kind of materials, and the quantity, in pounds, bushels, or gallons, purchased by him for the production of spirits, from whom and when purchased, and by what conveyance delivered at said distillery, the amount paid therefor, the kind and quantity of fuel purchased for use in the dis-

tillery, and from whom purchased, the amount paid for ice or water for use in the distillery, the repairs placed on said distillery or distill-
73 ing apparatus, the cost thereof, and by whom and where made, and of the name and residence of each person employed in or about the distillery, and in what capacity employed.

That the said Rudolph W. Ulrici, on each and every day during said period of time aforesaid, at the said district, did purchase and receive at the said distillery a large quantity of materials for the production of spirits at the said distillery, to wit, five hundred bushels of corn, and did then and there, on each and every of said days, omit, and cause to be omitted, from the said book required by law to be kept as aforesaid, a true and exact entry of the kind of said materials, and the quantity in pounds, bushels, or gallons, from whom and when said material was purchased, and by what conveyance the same was delivered at said distillery, and the amount paid for said materials, with intent then and there, upon each and every of said days, to defraud the United States of America of the internal-revenue tax then and there imposed by law upon the spirits intended by him, the said Rudolph W. Ulrici, to be produced from the said material, and with intent then and there, upon each and every of said days,
74 on the part of him, the said Rudolph W. Ulrici, to conceal from the revenue officers of the United States the facts and particulars relating to the said purchase of material required to be stated and entered in said book as aforesaid, and with intent then and there to mislead the said officers in reference thereto, contrary to the form of the statutes of the United States in such case made and provided; whereby, and by force of the said statutes, all of the said property in this information described, both real and personal, became and is forfeited to the uses in said statutes specified.

13th. That heretofore, to wit, between the first day of Jan'a'y, A. D. 1873, and the tenth day of May, A. D. 1875, at the eastern district of Missouri aforesaid, the said Rudolph W. Ulrici, being then and there a person making and distilling spirits at the distillery situate at the south-west corner of Cedar street and Main street, in the city of St. Louis, within said district, and then and there running a certain still and certain boilers, and other vessels used for the purpose of distilling spirits, and then and there having such still, boilers, and other vessels so used, under his superintendence as owner thereof, and then and there using such
75 still, boilers, and other vessels, was required by law, from day to day, during said period, to make in a certain book, upon each and every day during said period of time, a true and exact entry of the quantity of grain and other materials used for the production of spirits, the time of day when any yeast or other composition was put into any mash or beer for the purpose of exciting fermentation, the quantity of mash in each tub, designating the same by the number of the tub, the number of dry inches, that is to say, the number of inches between the top of each tub and the surface of the mash or beer therein at the time of yeasting, the gravity and temperature of the beer at the time of yeasting, and on every day thereafter its quantity, gravity, and temperature, at the hour of twelve meridian; also of the time when any fermenting tub was emptied of ripe mash or beer, the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold

or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold.

That the said Rudolph W. Ulrici on each and every day during said period of time, at the district aforesaid, did use and cause
76 to be used for the production of spirits at the said distillery five hundred bushels of corn, and did then and there, upon each and every of said days, omit and cause to be omitted from said book the entry of said five hundred bushels of corn required by law to be entered as aforesaid, with intent then and there upon each and every of said days to defraud the United States of America of the internal-revenue tax then and there imposed by law upon the spirits intended by him, the said Rudolph W. Ulrici, to be produced from the said five hundred bushels of corn, and with intent, then and there upon each and every of said days, on the part of him, the said Rudolph W. Ulrici, to conceal from the revenue officers of the United States the facts and particulars relating to the said corn used and caused to be used for the production of spirits as aforesaid, required to be stated and entered in said book as aforesaid, and with intent then and there to mislead the said officers in reference thereto, contrary to the form of the statutes of the United States in such cases made and provided,
77 whereby and by force of the said statutes all of the said property in this information described, both real and personal, became and is forfeited to the uses in said statutes specified.

14th. That all and singular the premises are true, and within the jurisdiction of the court; that by reason of the matters above set forth, all the said property, both real and personal, has become forfeited to the United States.

Wherefore said attorney prays that the usual process and monition may issue, according to the practice of said court in similar cases, to enforce said forfeiture, and requiring notice to be given to all persons concerned in interest to appear and show cause, on the return day of said process, why said forfeiture should not be decreed; and that due proceedings being had, said goods and property may be condemned and sold; and for such other and further relief as is proper in the premises.

DAVID P. DYER,
U. S. Attorney, Eastern District Mo.

78 *Warrant, &c.*, 1218 *barrels of spirits et alia. In case.* #554.—*Issued June 5th*, 1875.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to the marshal of the United States in and for said district, greeting:

Whereas an information has been filed in the circuit court of the United States in and for the eastern district of Missouri, on the fourth day of June, in the year of our Lord one thousand eight hundred and seventy-five, by David P. Dyer, esq., attorney of the United States in and for said district, suing on behalf of the United States on the information of Lucian Hawley, supervisor of internal revenue, specially authorized, against—

2 sets boilers, each 5 double tube boilers.
1 line of iron shafting.

1 lot coal, about 12 tons.
3 sets connecting gear.
2 iron water-pipes, 3-inch.
5 fire pokers.
1 lot iron grate-bars.
1 lot rubber hose (50 feet).
3 sledge hammers.
2 shovels
2 single-cylinder engines.
2 set gearing for engines.
1 broad belt.
4 narrow belts.
79 1 copper oil holder.
1 doctor engine.
1 steam-pump for water.
1 blacksmith vise.
1 blacksmith anvil.
1 blacksmith bellows.
1 lot blacksmith tools.
1 roll lamp-wick.
11 iron steam-pipes.
1 copper beer pipe.
75 feet rubber hose (small).
2 iron water-pipes.
4 high-wine pipes.
1 low-wine pipe.
1 lot engine tools, packing, &c.
1 large copper still.
1 spirit receiver.
1 small wood still.
2 4-inch water-pipes.
2 beer wells.
2 beer pipes.
1 beer trough.
1 force-pump.
5 water-pipes.
1 line shafting.
1 set connecting pulleys.
1 alcohol column.
1 alcohol column (small).
1 large wood still.
80 1 large wood worm-tub.
1 high-wine tub, 86 gallons.
2 low wine-tub', 198 & 270 gallons.
8 high-wine pipes.
2 separators.
1 low-wine pipe.
5 water-pipes.
1 lot rubber hose, about 125 feet 2 inch's.
3 large lanterns.
1 lot tools, paints, &c.

1 spirit cistern for alcohol colum'.
1 small worm tub.
1 small worm tub.
1 large water tub.
4 water-pipes.
2 worm tubs and worms.
1 wood still.
262 bags corn.
3 barrels lime.
1 grindstone.
4 broad belts.
3 sets of pulleys.
1 set gearing, extra large.
5 grain elevators.
1 elevator bin.
1 lot of old iron.
1 truck (hand).
1 hand pump.
2 steam-pipes.
81 4 sets burs.
1 lot mill pecks, about 24.
3 lots old belting.
4 cogwheels, disconnected.
1 crane.
1 large worm, tub and worm.
1 wood doubler.
1 beer heater.
1 wood still, large (taken twice).
3 large iron beer pipes (taken twice).
2 low-wine pipes (1 low wine pipe).
7 water pipes (taken before).
1 lot corn bags.
1 large rope and pulleys.
3 lines of shafting.
2 sets of gearing.
1 turning lathe (forurs bench).
1 bin of corn about 200 bushels (sold).
1 low-wine tub, 270 gallons.
4 lines of shafting (tak*ing* al*l*ready).
1 screening mill.
1 lot old rope.
4 belts and pulleys (taken before).
2 fanning mills.
7 sets gearing (taken before).
1 sifter.
4 sets gearing.
4 bands and pulleys.
1 grain screen.
82 1 line shafting.
1 set gearing.
1 hopper and steelyards.

1 small Fairbanks scales.
2 lots meal bags.
1 meal cistern (cooker).
2 meal conductors (conorger).
2 large water-tanks.
1 lot large copper pipe.
5 iron water-pipes.
3 meal tubs (mash tub).
1 blower.
2 copper worms (small).
6 water-pipes (large).
1 hot-water tub.
1 6-inch copper pipe about 30 feet.
1 line of shafting.
4 sets gearing.
1 steam-pump (nigger), (engine).
3 small mash tubs (for yeast).
8 yeast tubs.
3 line water-pipes.
2 line steam-pipes.
16 large fermenting tubs.
4 large vats for spirits, beer (can't be found.) (Error.)
1 refrigerator containing 3 copper yeast retorts.
5 copper kettles.
5 wooden tubs.
1 copper yeast retort.
83 2 fermenting tubs.
1 lot rubber-hose pipe.
1 large fermenting tubs.
4 small fermenting tubs.
2 small fermenting tubs.
4 receiving cisterns, spent pipes and branches.
358 barrels spirits (high wines).
1 old sleigh.
1 lot empty tubs (3), old.
237 barrels of spirits (high wines).
1 lot of staves and hoops.
1 coal stove and pipes.
444 barrels of high wines.
1 governor.
1 cast-iron band wheel.
1 lot machine gearing.
1 cast-iron band wheel (small).
3 blowers.
179 barrels high wine.
90 empty barrels.
49 empty barrels.
40 empty barrels.
1 lot coopers' tools.
1 steam-pump and gearing.

1 heavy wagon.
1 platform scale set in the ground.
1 lounge.
5 wood-bottomed chairs.
8 small pictures.
84 1 small clock.

Also the following-described lot or tract of land, with buildings thereon, situated in block #42 in said city of St. Louis, State of Missiouri, being the distillery and distilling premises of Rudolph W. Ulrici, on the south side of Cedar street in block No. 42, commences east of private alley 74 feet 6 inches front by 118 feet deep; thence east to Main street; thence south to Mulberry; thence westward to Second street; thence north 120 feet to Eberle. The 74 feet 6 inches are owned by Rudolph W. Ulrici, as well as the improvement thereon and the adjoining building east thereof, which constitute what is known as the Ulrici distillery in a cause of seizure and forfeiture, for the reasons and causes in said information mentioned, and praying the usual process and monition of said circuit court in that behalf to be issued.

You are hereby commanded to arrest and take into your possession for safe custody the said property hereinbefore mentioned, and you are commanded to keep safely all property so arrested by you and detain the same subject to the further order of said circuit court, unless sooner discharged from your custody according to the law or the rules of said circuit court.

85 And you are further commanded to cause public notice of such arrest of said property, and of the time assigned for the return of this warrant and the hearing of said cause to be given by publication in the St. Louis Republican, a public newspaper printed at the city of St. Louis, in said district, by posting copies of said notice as is required by like law and publication in said newspaper.

Also to admonish and summon all persons claiming any interest in said property or knowing or having anything to say why the same should not be decreed to be forfeited to the said United States and condemned and sold to answer the prayer of said information; that they be and appear before said circuit court at a return term thereof, to be begun and holden at said circuit court's room in the city of St. Louis, in said district, on the first Monday, the fifth day of July next, at ten o'clock in the forenoon, when and where said cause will be heard, then and there to interpose their claims and answer said information, and make their allegations in that behalf.

And of what you have done in the premises do you also then and make return together with this warrant.

86 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fifth day of June, A. D. 1875. Issued at office in the city of St. Louis, under the seal of said circuit court and the signature of the clerk thereof, the day and year last above named.

[SEAL.]

M. M. PRICE, *Clerk*,
By C. M. WARD, *Deputy*.

United States marshal's proclamation.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for the eastern district of Missouri.

I, C. A. Newcomb, United States marshal for the eastern district of Missouri, do hereby give public notice that in case No. 554 of the United States of America against 1,218 barrels of spirits, et alia, in a cause of seizure and forfeiture, I did, on the 7th day of June, A. D. 1875, at the city St. Louis, Mo., arrest and take into my possession for safe custody the said—

Two sets boilers, each 5 double tube boilers.
1 line of iron shafting.
1 lot of coal, about 12 tons.
3 sets connecting gear.
2 iron water-pipes, 3-inch.
5 fire pokers.
1 lot iron grate bars.
1 lot rubber hose, 50 feet.
3 sledge hammers.
2 shovels.
87 2 single-cylinder engines.
1 broad belt.
4 narrow belts.
1 copper oil-holder.
1 doctor engine.
1 steam-pump for water.
1 blacksmith vise.
1 blacksmith anvil.
1 blacksmith bellows.
1 lot blacksmith tools.
1 roll lamp-wick.
11 iron steam-pipes.
1 copper beer pipe.
75 feet rubber hose, small.
2 iron water-pipes.
4 high-wine pipes.
1 low-wine pipe.
1 lot engine tools, packing, &c.
1 large copper still.
1 spirit receiver.
1 small wood still.
2 4-inch water-pipe'.
2 beer wells.
2 beer pipes.
1 beer trough.
1 force-pump.
5 water-pipes.

1 line shafting.
1 set connecting pulleys.
1 alcohol column.
1 alcohol column (small).
1 large wood worm tub.
1 high-wine tub, 86 gallons.
2 low-wine tubs, 198 and 270 gallons.
8 high-wine pipes.
2 separators.
1 low-wine pipe.
5 water-pipes.
1 lot rubber hose, about 125 feet, 2-inch.
3 large lanterns.
1 lot tools, paints, &c.
1 spirit cistern, for alcohol column.
1 small worm tub.
1 small worm tub.
1 large water tub.
4 water-pipes.
2 worm tubs and worms.
1 wood still.
262 bags corn.
3 barrels lime.
1 grindstone.
4 broad belts.
3 sets pulleys.
1 set gearing, extra large.
5 grain elevators.
1 elevator bin.
1 lot of old iron.
1 truck (hand).
1 hand pump.
2 steam pipes.
4 sets burrs.
1 lot mill picks, about 24.
3 lots old belting.
4 cog-wheels, disconnected.
1 crane.
1 large worm tub and worm.
1 wood doubler.
1 beer header.
1 wood still, large.
88 3 large iron beer pipes.
2 low-wine pipes.
7 water-pipes.
1 lot corn bags.
1 large rope and pulleys.
3 lines of shafting.
2 sets of gearing.
1 turning lathe.
1 bin of corn, about 200 bushels.

1 low-wine still, 270 gallons.
4 lines of shafting.
1 screening mill.
1 lot old rope.
4 belts and pulleys.
2 fanning-mills.
7 sets gearing.
1 sifter.
4 sets gearing.
4 bands and pulleys.
1 grain screen.
1 line shafting.
1 set gearing.
1 hopper and steelyards.
1 small Fairbanks scales.
2 lots meal bags.
1 meal cistern.
2 meal conductors.
2 large water-tanks.
1 large copper pipe.
5 iron water-pipes.
3 meal tubs.
1 blower.
2 copper worms, small.
6 water-pipes, large.
1 hot-water tub.
1 6-inch copper pipe, about 30 feet.
1 line shafting.
4 sets gearing.
1 steam-pump.
3 small wash-tubs, for yeast.
8 yeast tubs.
3 line water-pipes.
2 line steam-pipes.
16 large fermenting tubs.
4 large vats for spirit beer.
1 refrigerator containing 3 copper yeast retort'.
5 copper kettles.
5 wooden tubs.
1 copper yeast retort.
2 fermenting tubs.
1 lot rubber-hose pipe.
1 large fermenting tub.
4 small fermenting tubs.
2 small fermenting tubs.
4 receiving cisterns, spent pipes, and branches.
358 barrels spirits, high wines.
1 old sleigh.
1 lot empty tubs, 3 old.
237 barrels spirits, high wines.
1 lot staves and hoops.

1 coal stove.
444 barrels high wines.
1 governor.
1 cast-iron band wheel.
89 1 lot machine gearing.
1 cast-iron band wheel (small).
3 blowers.
179 barrels high wines.
90 empty barrels.
49 empty barrels.
40 empty barrels.
1 lot cooper's tools.
1 steam-pump and gearing.
1 heavy wagon.
1 platform scale set in the ground.
1 lounge.
5 wooden-bottom chairs.
8 small pictures.
1 small clock.

Also the following-described lot or tract of land, with buildings thereon, situate in block No. 42, in said city of St. Louis, State of Missouri, being the distillery and distilling premises of Rudolph W. Ulrici, on the south side of Cedar street, in block No. 42, commences east of private alley 74 feet 6 inches front by 118 feet deep; thence east to Maine street; thence south to Mulberry; thence westward to Second street; thence north 120 feet to Eberle. The 74 feet 6 inches are owned by Rudolph W. Ulrici as well as the improvement thereon, and the adjoining buildings east thereof, which constitute what is known as the Ulrici distillery.

And I hereby also give public notice that the time assigned for the return of said warrant and the hearing of this cause is the first Monday the fifth day of July next, at ten o'clock in the forenoon, and I hereby admonish and summon all persons claiming any interest in said property, or knowing or having anything to say why the same should not be decreed to be forfeited to the United States, and be condemned and
90 sold to answer the prayer of said information, that they be and appear before said circuit court, at its rooms in the city of Saint Louis, in said district, on said fifth day of July next, at ten o'clock in the forenoon, when and where said cause will be heard, then and there to interpose their claims and answer said information and make allegations in that behalf.

C. A. NEWCOMB,
U. S. Marshal, Eastern District of Missouri.

ST. LOUIS, MO., *June* 14, 1875.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return on this warrant that I executed the same by arresting and taking into my possession for safe custody the within goods, wares, and property as described in the annexed advertisement, hereto attached and made a part of this return, on the 7th day of June, A. D. 1875, at St. Louis, in said district, and by detaining the same subject to the further order of the

circuit court for said district, and by delivering a copy of the information to John W. Noble, esq., attorney for claimants, and by publishing the annexed advertisement in the Missouri Republican, a daily newspaper
91 published in the city of St. Louis, from the 10th day of June to the 24th day of June, A. D. 1875, inclusive, being fifteen days, and by posting the same on bulletin board in the St. Louis post-office, the the most public place in the city of St. Louis, near to the place of trial, for the same length of time.

C. A. NEWCOMB,
U. S. Marshal for Eastern District of Missouri,
By I. SAWYER, *Deputy.*

92 *Writ of venditioni exponas in case No. 554.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to the marshal of said United States in and for the eastern district of Missouri, greeting:

Whereas an information has been filed in the circuit court of said United States, in and for said district, on the 4th day of June, A. D. 1875, by David P. Dyer, esq'r, attorney of the United States for said eastern district, sueing on behalf of said United States at the relation of Lucian Hawley, supervisor of internal revenue, specially authorized, against twelve hundred and eighteen barrels of spirits et alia.

And whereas of the said property seized herein, viz, corn, corn bran, wheat, hops, and grain, the same has been ordered to be sold, pending the litigation in this cause, to the highest bidder at public auction, at in said district, upon giving at least five days' public notice of the time,
93 place, and terms of sale by publication in the St. Louis Republican, a daily newspaper published in the city of St. Louis, in said district, and that the terms of said sale be for cash:

Now, therefore, you are hereby commanded to cause the said goods and property hereinbefore described to be sold in manner and form at the time and place, upon the notice and on the terms and conditions ordered by said court as hereinbefore set forth, and you will pay the proceeds of such sale into the registry of this court; and have you also this writ, with an account of your proceedings thereon, before said court on the fifth day of July next.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the eleventh day of June, A. D. 1875.

Issued at office, in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE, *Clerk,*
By C. M. WARD, *Deputy.*

Notice of sale.

United States marshal's sale.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

94 In case No. 553 of the United States ex rel. Lucian Hawley, supervisor of internal revenue et al., and vs. 2,500 bushels meal et alia. In case No. 554 of the United States ex rel. Lucien Hawley, supervisor of internal revenue et al., vs. 1,218 barrels spirits et alia.

Whereas by virtue of a writ and order of venditioni exponis issued in each case, and dated the 11th day of June, 1875, I am directed as marshal of said United States for said district, to expose for sale and will sell the following described property, to wit:

In case No. 553, 1 lot of grain, corn, wheat, and corn meal; also two mules and one horse, together with harness for the same.

I will therefore expose for sale and will sell the above-named property on Thursday, the 17th day of June, 1875, at Bevis & Fraser's distilling building, at the northeast corner of Barton and De Kalb streets, in the city of St. Louis, in said district, to the highest bidder for cash.

In case No. 554, 1 lot of corn, corn bran, wheat, hops, and grain.

I will therefore expose for sale, and will sell the above-named property on Friday, the 18th day of June, 1875, at Ulrici's distillery building, on Second, between Mulberry and Cedar streets, in the city of St. Louis, in said district, to the highest bidder for cash.

The sales to commence at 10 o'clock in the foreno'n on each day.

95 C. A. NEWCOMB,
U. S. Marshal for Eastern District of Missouri.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by giving public notice of the time, terms, and place of sale, in the Missouri Republican, a daily newspaper printed at the city of St. Louis, in said district, for five successive days. I did, on the 18th day of June, A. D. 1875, sell to Randolph and Wolfeinger the within corn, wheat, and hops, for the sum of one hundred and ninety-one $\frac{75}{100}$ dollars (191.75), they being the highest bidders for cash, and that I have paid the proceeds into the registry of the court.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By I. SAWER, *Dep'ty.*

96 *Writ of venditioni exponas in case of No. 554.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to the marshal of the United States for the eastern district of Missouri, greeting:

Whereas an information has been filed in the circuit court of the United States in and for the eastern district of Missouri, on the 4th day of June,

A. D. 1875, by David P. Dyer, esquire, attorney of the United States for said district, suing on behalf of the United States, at the relation of Lucien Hawley, supervisor of internal revenue, specially authorized against—

2 sets of boilers, each 5 double tube boilers.
1 line of iron shafting.
1 lot of coal, about 12 tons.
3 sets connecting gear.
2 iron water-pipes, 3-inch.
5 fire pokers.
1 lot iron grate-bars.
1 lot rubber hose (50 feet).
3 sledge hammers.
2 shovels.
2 single-cylinder engines.
2 sets gearing for engines.
1 broad belt.
4 narrow belts.
1 copper oil-holder.
1 doctor engine.
1 steam-pump for water.
1 blacksmith vise.
1 blacksmith anvil.
1 blacksmith bellows.
1 lot blacksmith tools.
1 roll lamp-wick.
11 iron steam-pipes.
1 copper beer pipe.
75 feet rubber hose, small.
2 iron water-pipes.
4 high-wine pipes.
1 low-wine pipe.
1 lot engine tools, packing, &c.
1 large copper still.
1 spirit receiver.
1 small wood still.
2 4-inch water-pipes.
97 2 beer wells.
2 beer pipes.
1 beer trough.
1 force-pump.
5 water-pipes.
1 line shafting.
1 set of connecting pulleys.
1 alcohol column.
1 alcohol column, small.
1 large wood still.
1 large wood worm tub.
1 high-wine tub, 86 gallons.
2 low-wine tubs, 198 & 270 gallons ea.
8 high-wine pipes.
2 separators.

1 low-wine pipe.
5 water-pipes.
1 lot rubber hose, about 125 feet, 2-inch.
3 large lanterns.
1 lot tools, paints, &c.
1 spirit cistern for alcohol column.
1 small worm tub.
1 small worm tub.
1 large water tub.
4 water-pipes.
2 worm tubs and worms.
1 wood still.
3 barrels lime.
1 grindstone.
4 broad belts.
3 sets of pulleys.
1 set of gearing, extra large.
5 grain elevators.
1 elevator bin.
1 lot of old iron.
1 truck (hand).
1 hand-pump.
2 steam-pipes.
4 set of burrs.
1 lot mill picks, about 24.
3 lots of old belting.
4 cog-wheels, disconnected.
1 crane.
1 large worm tub and worm.
1 wood doubler.
1 beer heater.
1 wood still, large.
3 large iron beer pipes.
2 low-wine pipes.
7 water-pipes.
1 lot corn bags.
1 large rope and pulleys.
3 lines of shafting.
2 sets of gearing.
1 turning lathe.
1 low-wine still, 270 gallons.
4 line of shafting.
1 screening mill.
1 lot old rope.
4 belts and pulleys.
2 fanning-mills.
7 sets of gearing.
1 sifter.
4 sets of gearing.
4 bands and pulleys.
1 grain screen.

A. D. 1875, by David P. Dyer, esquire, attorney of the United States for said district, suing on behalf of the United States, at the relation of Lucien Hawley, supervisor of internal revenue, specially authorized against—

2 sets of boilers, each 5 double tube boilers.
1 line of iron shafting.
1 lot of coal, about 12 tons.
3 sets connecting gear.
2 iron water-pipes, 3-inch.
5 fire pokers.
1 lot iron grate-bars.
1 lot rubber hose (50 feet).
3 sledge hammers.
2 shovels.
2 single-cylinder engines.
2 sets gearing for engines.
1 broad belt.
4 narrow belts.
1 copper oil-holder.
1 doctor engine.
1 steam-pump for water.
1 blacksmith vise.
1 blacksmith anvil.
1 blacksmith bellows.
1 lot blacksmith tools.
1 roll lamp-wick.
11 iron steam-pipes.
1 copper beer pipe.
75 feet rubber hose, small.
2 iron water-pipes.
4 high-wine pipes.
1 low-wine pipe.
1 lot engine tools, packing, &c.
1 large copper still.
1 spirit receiver.
1 small wood still.
2 4-inch water-pipes.
97 2 beer wells.
2 beer pipes.
1 beer trough.
1 force-pump.
5 water-pipes.
1 line shafting.
1 set of connecting pulleys.
1 alcohol column.
1 alcohol column, small.
1 large wood still.
1 large wood worm tub.
1 high-wine tub, 86 gallons.
2 low-wine tubs, 198 & 270 gallons ea.
8 high-wine pipes.
2 separators.

1 low-wine pipe.
5 water-pipes.
1 lot rubber hose, about 125 feet, 2-inch.
3 large lanterns.
1 lot tools, paints, &c.
1 spirit cistern for alcohol column.
1 small worm tub.
1 small worm tub.
1 large water tub.
4 water-pipes.
2 worm tubs and worms.
1 wood still.
3 barrels lime.
1 grindstone.
4 broad belts.
3 sets of pulleys.
1 set of gearing, extra large.
5 grain elevators.
1 elevator bin.
1 lot of old iron.
1 truck (hand).
1 hand-pump.
2 steam-pipes.
4 set of burrs.
1 lot mill picks, about 24.
3 lots of old belting.
4 cog-wheels, disconnected.
1 crane.
1 large worm tub and worm.
1 wood doubler.
1 beer heater.
1 wood still, large.
3 large iron beer pipes.
2 low-wine pipes.
7 water-pipes.
1 lot corn bags.
1 large rope and pulleys.
3 lines of shafting.
2 sets of gearing.
1 turning lathe.
1 low-wine still, 270 gallons.
4 line of shafting.
1 screening mill.
1 lot old rope.
4 belts and pulleys.
2 fanning-mills.
7 sets of gearing.
1 sifter.
4 sets of gearing.
4 bands and pulleys.
1 grain screen.

1 line of shafting.
1 set of gearing.
1 hopper and steelyards.
1 small Fairbanks scales.
2 lots of meal bags.
1 meal cistern.
98 2 meal conductors.
2 large water-tanks.
1 lot large copper pipe.
5 iron water-pipes.
3 meal tubs.
1 blower.
2 copper worms (small).
6 water pipes (large).
1 hot water tub.
16-inch copper pipe, about 30 feet.
1 line of shafting.
For yeast, 8 yeast tubs.
3 line water-pipes.
2 line steam-pipes.
16 large fermenting tubs.
4 large vats for spirits, beer.
1 refrigerator containing 3 copper yeast-retorts.
5 copper kettles.
5 wooden tubs.
1 copper yeast-retort.
2 fermenting tubs.
1 lot rubber-hose pipe.
1 large fermenting tub.
4 small fermenting tubs.
2 small fermenting tubs.
4 receiving cistern' (spirits), pipes, & branches.
1 old sleigh.
1 lot empty tubs (3), old.
1 lot staves and hoops.
1 coal stove.
1 gove'nor.
1 cast-iron *lane* wheel.
1 lot machine gearing.
1 cast-iron band wheel (small).
3 blowers.
179 empty barrels.
1 lot coopers' tools.
1 steam-pump & gearing.
1 heavy wagon.
1 platform scale set in the ground.
3 desks.
1 lounge.
5 wooden-bottom chairs.
8 small pictures.
1 small clock.

Also, the following described lot or tract of land, with the buildings thereon, situate in block No. 42, in the city of St. Louis, State of Missouri, being the distillery and distillery premises of Rudolph W. Ulrici, on the *the* south side of Cedar street, in block No. 42, commences east of
99 private alley, 74 feet 6 inches front by 118 feet deep, next to said alley. The 74 feet 6 inches are owned by Rudolph W. Ulrici, as well as the improvements thereon, and the adjoining buildings east thereof, which constitute what is known as the Ulrici distillery*—and praying that process in due form of law, to enforce the forfeiture mentioned in said information, may in this behalf be issued, and that said property may be condemned and sold to answer the prayer of said information;

And whereas said property has been seized, and is now in custody by virtue of process duly issued out of this court in pursuance of the prayer of said information, and such proceedings have been thereupon had by the decree of said court, had and pronounced on the 7th day of June, A. D. 1876, the said property was condemned as forfeited, and ordered to be sold by you, the said marshal, to the highest bidder at public auction, in the city of St. Louis, in said district, upon giving at least ten days' notice of the time, place, and terms of sale by publication in the St. Louis Republican, a daily newspaper published in the city of St. Louis, in said district, and that the terms of said sale be for cash:

100 Now, therefore, you are hereby commanded to cause the said property hereinbefore described to be sold, in manner and form, at the time and place, upon the notice, and upon the terms and conditions ordered by said court, as hereinbefore set forth, and you will pay the proceeds of such sale into the registry of this court; and have you also this writ, with an account of your proceedings thereon, before our said court on the third Monday of September next.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 14th day of June, A. D. 1876. Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

Notice of sale.

United States marshal's sale.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court for said district.

In case No. 554 of the United States ex rel. 1,218 barrels spirits et al.

Whereas, by virtue of a writ of venditioni exponas, issued out of
100 the clerk's office for said circuit court, I am ordered as marshal to expose for sale, and will sell the following-described property, to wit:

2 sets of boilers, each 5 double-tube boilers.
One line of iron shafting.
1 lot of coal, about 12 tons.

3 sets connecting gear.
2 iron water-pipes, 3-inch.
5 fire-pokers.
1 lot iron grate-bars.
1 lot rubber hose, 50 feet.
3 sledge-hammers.
2 shovels.
2 single cylinder engines.
2 sets gearing for engines.
1 broad belt.
4 narrow belts.
1 copper oil-holder.
1 doctor engine.
1 steam-pump for water.
1 blacksmiths' vise.
1 blacksmiths' anvil.
1 blacksmiths' bellows.
1 lot blacksmiths' tools.
1 roll lamp-wick.
11 iron steam-pipes.
1 copper beer-pipe.
75 feet rubber hose (small).
2 iron water-pipes.
4 high-wine pipes.
1 low-wine pipe.
1 lot engine tools, packing, etc.
1 large copper still.
1 spirit receiver.
1 small wood still.
24-inch water-pipes.
2 beer wells.
2 beer-pipes.
1 beer-trough.
1 force-pump.
5 water-pipes.
1 line shafting.
1 set connecting-pulleys.
1 alcohol column.
1 alcohol column (small).
1 large wood still.
1 large wood worm-tub.
1 high-wine tub, 86 gallons.
2 low-wine tubs, 198 and 270 gallons each.
8 high-wine pipes.
2 separators.
1 low-wine pipe.
5 water-pipes.
1 lot rubber hose, about 125 feet, 2-inch.
3 large lanterns.
1 lot tools, paints, etc.
1 spirit cistern for alchohol column.

1 small worm-tub.
1 small worm-tub.
1 large water-tub.
4 water-pipes.
102 2 worm tubs and worms.
1 wood still.
3 barrels lime.
1 grindstone.
4 broad belts.
3 sets of pulleys.
1 set of gearing (extra large).
5 grain elevators.
1 elevator bin.
1 lot of old iron.
1 truck (hand).
1 hand pump.
2 steam pipes.
4 sets of burrs.
1 lot mill picks (about 24).
3 lots of old belting.
4 cogwheels, disconnected.
1 crane.
1 large worm tub and worm.
1 wood doubler.
1 beer heater.
1 wood still (large).
3 large iron beer pipes.
2 low-wine pipes.
7 water pipes.
1 lot corn bogs.
1 large rope and pulleys.
3 lines of shafting.
2 sets of gearing.
1 turning lathe.
1 low-wine still (270 gallons).
4 lines of shafting.
1 screening mill.
1 lot old rope.
4 belts and pulleys.
2 fanning mills.
7 sets of gearing.
1 sifter.
4 sets of gearing.
4 bands and pulleys.
1 grain screen.
1 line of shafting.
1 set of gearing.
1 hopper and steelyards.
1 small Fairbanks scales.
2 lots of meal bags,
1 meal cistern.

2 meal conductors.
2 large water tanks.
1 lot large copper pipe.
5 iron water pipes.
3 meal tubs.
1 blower.
2 co'per worms (small).
6 water pipes (large).
1 hot-water tub.
1 six-inch copper pipe, about 30 feet.
1 line of shafting.
4 sets of gearing.
1 steam pump.
3 small mash tubs, for yeast.
8 yeast tubs.
3 lines water pipes.
2 lines steam pipes.
16 large fermenting tubs.
4 large vats for spirit' (beer).
1 refrigerator, containing 3 copper yeast retorts.
5 copper kettles.
5 wooden tubs.
1 copper yeast retort.
2 fermenting tubs.
103 1 lot rubber hose pipe.
1 large fermenting tub.
4 small fermenting tubs.
2 small fermenting tubs.
4 receiving cisterns, spent pipes and branches.
1 old sleigh.
1 lot empty tubs (3 old).
1 lot staves and hoops.
1 coal stove.
1 gove'nor.
1 cast-iron band wheel.
1 lot machine gearing.
1 cast-iron band wheel (small).
3 blowers.
179 empty barrels.
1 lot coopers' tools.
1 steam pump and gearing.
1 heavy wagon.
1 platform scale, set in the ground.
3 desks.
1 lounge.
5 wooden-bottom chairs.
8 small pictures.
1 small clock.

Also, the following described lot or tract of land, with the buildings thereon, situate in block No. 42, in the city of St. Louis, State of Missouri, being the distillery and distillery premises of Rudolph W. Ulrici, on the

south side of Cedar street, in block No. 42, commences east of private alley, 74 feet 6 inches front by 118 feet deep, next to said alley. The 74 feet 6 inches is owned by Rudolph W. Ulrici, as well as the improvements thereon, and the adjoining buildings east thereof, which constitute what is known as the Ulrici distillery—which property is ordered in the writ aforesaid to be sold by me, the said marshal, to the highest bidder at public auction, in the city of St. Louis, in said district, upon giving public notice of the time, place, and terms of sale, by publication for at least ten
104 successive days in the St. Louis Republican, a daily newspaper published in the city of St. Louis, *a daily newspaper published in said city of St. Louis*, and that the terms of said sale be:

The whole of the purchase-money to be paid in cash. The sale will take place on Tuesday, June 27, 1876, at 11 o'clock in the forenoon, on the premises in Cedar street near Main street, in the city of St. Louis, in said district, and continue until all is sold.

H. W. LEFFINGWELL,
United States Marshalls,
Eastern District of Missouri.

ST. LOUIS, *June* 15, 1876.

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I have executed the within writ by giving public notice of the time, place, and terms of sale in the St. Louis Republican, a daily newspaper published in the city of St. Louis, in said district (a copy of said advertisement is hereto attached and made a part of this return), and that I have sold the within described property on the 27th day of June, A. D. 1876, at public auction, at St. Louis, in said district, to Richard W. Ulrici, he being the highest bidder, for the sum of four thousand and thirty-five dollars, which amount has been by the bidder paid to me and by me placed in the registry of this court.

Advertisement on previous page.

H. W. LEFFINGWELL,
U. S. Marshal, E. D. Mo.
By JAMES B. GEGGIE, *Deputy.*

105 On the 11th day of June, A. D. 1875, the following further proceedings were had and appear of record in said cause 554, to wit:

THE UNITED STATES EX REL., &c., *vs.* 1,218 BARRELS SPIRITS ET ALIA. } 554.

This day comes David P. Dyer, esq., attorney of the United States for the eastern district of Missouri, and presents his petition to the court representing that the property seized herein by virtue of a warrant of arrest and monition comprises, among other things, large quantities of perishable property, to wit, corn, corn bran, wheat, hops, and grain, and that said property is liable to become worthless unless speedily sold.

It is therefore ordered by the court that the said property be sold, pending the litigation of this cause, to the highest bidder for cash. That five days' public notice be given of the time, place, and terms of sale, by publication in the St. Louis Republican, a newspaper published in the city of St. Louis; that the proceeds of said sale be paid into the registry of this court, and that a writ of venditioni exponas issue in accordance with this order.

106 *Petition for order to sell perishable property in case No. 554.*

United States circuit court for the eastern district of Missouri. March term, 1875.

UNITED STATES OF AMERICA EX REL., &c.,
vs.
1,218 BARRELS SPIRITS ET ALIA.

Now comes David P. Dyer, attorney for the United States for the eastern district of Missouri, and respectfully represents that the property seized herein and now in the custody of the United States marshal for said district comprises, among other things, large quantities of perishable property, to wit, corn, corn bran, wheat, hops, and other grain, and that said property is liable to become valueless unless speedily sold.

Said attorney therefore asks that an order may issue from this court to the said marshal to sell the said property herein specifically named at such time and *at* such terms as may to the said court seem proper.

DAVID P. DYER,
U. S. Att'y.

107 On the 6th day of July, A. D. 1876, the following further proceedings were had, and appear of record in said cause, to wit:

UNITED STATES EX REL. LUCIAN R. HAWLEY
vs. } 554.
1,218 BARRELS OF SPIRITS ET ALIA.

This day comes Richard W. Ulrici and Rudolph W. Ulrici, by Messrs. Noble & Orrick, their attorneys, and file their claim to certain property described in the information, and also file stipulation for costs, as required by the rules of this court, and thereupon the said claimants file demurrer to the information herein.

108 *Claim of Rich'd W. Ulrici & Rudolph W. Ulrici.—Filed July 6, 1875.*

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

In the circuit court of said United States in & for said district.

In case No. 544, A. D. 1875, of United States of America ex rel., &c., against 1,218 Barrels of Spirits et alia.

To the honorable Samuel Treat, judge of said district court:

The claim of Richard W. Ulrici and Ruldolph W. Ulrici, made in the above cause, alleges as follows:

First. That said Richard W. Ulrici is the owner in fee-simple of all

said real estate described in said information, except said portion described as 74 feet and six (6) inches front on Cedar street by 118 feet deep, that is to say: All that real estate in block 42 commencing on Cedar street 74 feet 6 in. east of private alley; thence east to Main street; thence south to Mulberry; thence westward to Second street; thence north 120 feet to Eberle, together with all improvements thereon, save the buildings extending along Cedar to Main, & block on Main, eighty feet, more or less.

109 Secondly. That said Richard W. hath heretofore leased said premises owned by him to said Rudolph W. Ulrici, by a written agreement, for term of years from June 9, 1863, upon certain rents & conditions in said agreement mentioned; but that said Richard W. hath not released any right in or to said premises to said United States under any circumstances.

Thirdly. That said Rudolph W. Ulrici is the owner in fee-simple absolute of all said real estate other than that owned & claimed by said Richard; that is to say: All that being 74 fee t6 inches front on Cedar by 118 feet deep next to said private alley, with the distillery & distillery apparatus thereon, subject to deed of trust hereinafter mentioned.

Fourthly. That said Rudolph is the owner absolute of all the improvements & buildings on said real estate of Richard extending from the real property of him, said Rudolph, on Cedar to corner of Main, & thence back on Main 80 feet, more or less.

Also of all the personal property in, upon, or about any & all said real estate and described in said information, save & except 194 barrels of said spirits owned & claimed by Gerhard Bensberg, of St. Louis, Mis-

110 souri, and 42 barrels of said spirits owned & claimed by F. C. J. Lebermann, of Denison, Texas.

Fifthly. That there is a deed of trust by said Rudolph W. Ulrici to Jno M. Krum, trustee for David Dows, of N. Y., dated about May, 1867, upon all said real estate owned by him, said Rudolph, as above described, & the distillery & distillery apparatus then thereon, to secure about the sum of sixty-four thousand dollars now due, and which said Dows & Co. claims as a lien on said premises.

NOBLE & ORRICK,
Claimant's Attorneys.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Rudolph W. Ulrici, being duly sworn, on his oath says that he is one of the claimants in the above cause, and personally acquainted with the facts in said claim mentioned, and is acting herein for said Richard W. Ulrici as well as for himself, and that, to the best of his knowledge & belief the allegations in the foregoing claim are true, and that he has put in the above claim for said Richard W. & for himself as owners as stated.

RUDOLPH W. ULRICI.

Subscribed & sworn to by the above-named affiant this 2d day of July, A. D. 1875, before me at my office.

M. M. PRICE, *Clerk*,
By C. M. WARD, *D. C.*

111 *Demurrer in case* = 554.—*Filed July* 6, 1875.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the district court of said United States in and for said eastern district.

UNITED STATES OF AMERICA, EX REL., &C.,
against
1,218 BARRELS OF SPIRITS ET ALIA (RUDOLPH W. Ulrici, claimant). } No. 554.

The claimant comes now and demurs to the 2nd, 3rd, 4th, 5th, 6th, 7th 8th, 9th, 10th, & 11th, 12th, and 13th articles in said information, and, for cause of demurrer says:

1st. That each and all said are insufficient in law to base a decree of forfeiture upon against said property or any part thereof.

2nd. That the facts alleged in either of said articles are not sufficient to constitute a forfeiture of seizure against said property therein or in said information described.

Claimant therefore asks judgment whether he shall further answer said articles or either of them.

NOBLE & ORRICK,
Claimant's Att'y.

112 On the 19th day of July, A. D. 1875, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED, STATES EX REL.,
vs.
1,218 BARRELS OF SPIRITS ET ALIA. } 554.

This day comes the district attorney on behalf of the United States and certain claimants by Messrs. Krum and Madill, their attorneys, and file stipulation, whereby it is agreed that David Dows, Morris and Alexander E. Orr, of the firm of Dows & Co., who have this day entered their appearance, may file claim and answer to the original information filed herein on or before the 16th day of August, 1875, and if before said date an amended information be filed, then said parties can have fifteen days after such filing in which to answer the same.

113 *Stipulation as to claim of David Dows et al.—Filed July* 19*th*, 1875.

In the circuit court of the United States for the eastern district of Missouri.

THE UNITED STATES
against
1,218 BARRELS OF SPIRITS ET ALIA.

In the above-entitled cause it is hereby stipulated that David Dows, J. Dows Mairs, and Alexander E. Orr, who compose the firm of David Dows

and Company, who have this day entered their appearance in said cause, may file their claim and answer to the original information filed herein on or before the sixteenth day of August, 1875; and if before said date an amended information be filed in said cause, then the said parties may have fifteen days after the filing of such amended information within which to answer the same.

DAVID P. DYER,
U. S. Attorney.
KRUM AND MADILL,
Att'ys for David Daws & Co.

ST. LOUIS, *July 19th*, '75.

114 *Claim of David Dows et al. in case* #554.—*Filed Aug.* 14, 1875.

In the circuit court of the United States for the eastern district of Missouri.

THE UNITED STATES OF AMERICA
against
1,218 BARRELS OF SPIRITS ET ALIA.

UNITED STATES OF AMERICA, *ss:*

And now come David Dows, J. Dows Mairs, and Alexander E. Orr, who are *parties* under the firm name of David Dows and Company, and residents of the city and State of New York, and John M. Krum, who is a citizen of the State of Missouri, and respectfully state and show unto the court as follows:

That by his certain deed, known as a deed of trust, bearing date the twenty-fourth day of May, 1867, Rudolph Ulrici, who was then the owner in fee simple of the property hereinafter , did convey to the said John M. Krum the following-described property, situated in the city of Saint Louis and State of Missouri, to wit: a piece or parcel of ground lying and being in block number forty-two in the city of Saint Louis, commencing at a point in the southern edge of Cedar street, where the eastern edge
115 of a private alley, as laid out by the late Thomas T. Smith, intersects said Cedar street, thence running eastwardly seventy-four feet and five inches (74′.5″) along the southern edge of Cedar street, thence southwardly and parallel with said alley one hundred and eighteen feet, more or less, to the east and west centre line of said block; thence westwardly seventy-four feet and five inches (74′.5″) along the centre line of said block to a point where the same intersects the eastern edge of said alley; thence northwardly one hundred and eighteen feet, more or less, along the eastern edge of said alley to the place of beginning. Said piece of ground being bounded on the north by Cedar street, east and south by Richard W. Ulrici, and west by said alley, together with all the buildings thereon erected, and the machinery, tools, and fixtures therein contained, and being made for a distillery; likewise a two-story brick building on the south side of Cedar street, east of and adjoining the above-described property, forming part of the distillery, containing machinery, mash and fermenting tubs; likewise all those buildings and their contents east thereof and adjoining the above-described property; the fermenting house south thereof

made of brick with gravel roof and fermenting tubs therein con-
116 tained all forming part of the distillery. Likewise the brick cow-stables south thereof, all the slop-boxes on the premises, the sheds in the yard; likewise the malt-house and kiln east of the stone warehouse, and the fixtures only of the malt-house south thereof; a cemented cellar in the stone warehouse, stables, carts, wagons, harnesses, and tools which belonged to the old distillery of Dreyer and Ulrici, as well as all other articles on the premises, and forming part of the distillery not herein mentioned, and which have been added since. That said deed of conveyance was so made by said Ulrici to secure the payment of a negotiable promissory note bearing date with said deed, made by said Ulrici for the sum of sixty-four thousand three hundred and eighty-three dollars and nine cents, and payable to the order of said David Dows and Company ninety days after date; that said note so made by said Ulrici and so secured by said deed was delivered by said Ulrici to said David Dows and Company, and that the said David Dows, J. Dows Mairs, and Alexander E. Orr, composing said firm as aforesaid, are not the legal holders and owners thereof.

And said parties show farther that said deed contained the fol-
117 lowing condition, among others, to wit: that if said promissory note should be punctually paid at maturity, then the property aforesaid should be released at the cost of said grantor, but if said promissory note should be allowed to remain due and unpaid, then said deed should remain in full force; that said deed vested in the said John M. Krum a power of sale at the instance and request of the legal holder of said note—the time, place, and conditions of such sale having been fixed by the terms of said deed, as will more fully appear by a reference to said deed, which is filed herewith and marked "Exhibit A."

And the said parties (respectfully show) farther that the said real estate hereinbefore described, and which is covered by said deed of trust, is, together with the buildings and improvements situated thereon, the same real estate, buildings, and improvements which have been seized in said cause for the grounds of forfeiture alleged in said information filed herein, and that besides said real estate, buildings, and improvements the following articles and property, which constitute a part of said distillery premises, and which are appurtenant thereunto, and which have been seized in said pro-
ceeding, are covered by the lien of said deed of trust, to wit: Two
118 sets of boilers, each five-double tube boilers; one line of iron shafting; three sets of connecting gear; two iron water pipes; two single cylinder engines; two sets of gearing of engines; one broad belt; four narrow belts; one doctor engine; one steam pump for water; one blacksmith vise; one blacksmith anvil; one blacksmith bellows; eleven iron steam pipes; one copper beer pipe; two iron water pipes; four high-wine pipes; one low-wine pipe; one large copper still; one spirit receiver; one small wood still; two four-inch water pipes; two beer wells; two beer pipes; one beer trough; one force pump; five water pipes; one line shafting; one set connecting pulleys; one alcohol column; one small alcohol column; one large wood still; one large wood worm tub; one high-wine tub; two low-wine tubs; eight high-wine pipes; two seperators; one low-wine pipe; five water pipes; one spirit cistern for alcohol column; two small worm tubs; one large water tub; four water pipes; two worm tubs and worms; one wood still; four broad belts; three sets of pulleys; one set of gearing, extra large; five grain elevators; one elevator bin; one

hand pump; two steam pipes; one crane; one large worm tub and worm; one wood doubler; one beer heater; one large wood still; three
119 large iron beer pipes; two low-wine pipes; seven water pipes; three lines of shafting; two sets of gearing; one low-wine still; four lines of shafting; one screening mill; two fanning mills; seven sets of gearing; one sifter; four sets of gearing; one grain screen; one line shafting; one set gearing; one meal cistern; two meal conductors; two large water tanks; one lot large copper pipe; five iron water pipes; three meal tubs; one blower; two copper worms; six water pipes; one hot-water tub; one six-inch copper pipe; one line of shafting; four sets gearing; one steam pump; three small mash tubs; eight yeast tubs; three line water pipes; two line steam pipes; sixteen large fermenting tubs; four large vats for spirit beer; one refrigerator, containing three copper yeast retorts; five copper kettles; five wooden tubs; one copper yeast retort; two fermenting tubs; one large fermenting tub; four small fermenting tubs; two small fermenting tubs; four receiving cisterns, spent pipes, and branches; one governor; one steam pump and gearing.

And said (parties respectfully) state farther that the said David Dows, J. Dows Mairs, and Alexander E. Orr, and one Van Deusens Mairs, now deceased, were on the tenth day of September, A. D. 1868, the
120 lawful owners of said note so secured by said deed of trust, and on said day composed the firm of David Dows and Company; that the said firm had theretofore loaned to the said Ulrici and advanced to him, in good faith, the sum of money evidenced and called for by said note, and that on said tenth day of September, 1868, the said note was past due and unpaid, and the condition of said deed of trast above recited thereby brokend. And the said (parties) state that on or about the said tenth day of September, A. D. 1868, the said Rudolph Ulrici, then being about to engage in and continue the business of a distiller upon the premises hereinbefore described, did, in conformity to the statute for such cases made and provided, did procure from the said David Dows, John D. Mairs, Alexander E. Orr, and Van Deusen Mairs the following instruments in writing, to wit:

We, David Dows and Co., of the city of New York, merchants, the parties beneficially interested in a certain deed of trust made by Rudolph W. Ulrici to John M. Krum, trustee, &c., dated the twenty-fourth day of May, A. D. 1867, of and for certain distillery property, situated in the city of Saint Louis, State of Missouri, in said deed of trust
121 particularly described and conveyed for the uses and purposes in said deed mentioned, do hereby consent that the premises described in said deed of trust may be used for the purpose of distilling spirits subject to the provisions of law, and do hereby stipulate that the lien of the United States for taxes and penalties hereafter accruing shall have priority of such deed of trust, and that in case of the forfeiture of the distillery premises, or any part thereof, the title of the same shall vest in the United States discharged from said deed of trust.

Dated New York, September 10, 1868.

DAVID DOWS.
JOHN D. MAIRS.
A. E. ORR.
VAN DEUSEN MAIRS,
Per JOHN D. MAIRS, *Att'y.*

Which said instrument was duly acknowledged by said parties, and on the twenty-ninth day of September, 1868, was by said Ulrici filed with the assessor for the first collection district of Missouri in conformity to the act of Congress entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 20, 1868. And the said parties respectfully show farther that on said twenty-ninth day
122 of September, 1868, the said Ulrici gave notice to said assessor of his intention to continue the business of a distiller within said collection district, and with such notice filed the said document hereinbefore recited, and that the said document was thereupon caused by said assessor to be placed of record in the office of the recorder of Saint Louis within said district; that upon the filing of said notice and said assent of said parties, the bond of said Ulrici, as a distiller, was duly approved, and he proceeded to carry on and did carry on the business of a distiller within said district until the first day of May of the next succeeding year, to wit, the first day of May, 1869, when the said Ulrici again gave notice of his intention to continue the business of a distiller and again gave bond which was duly approved, but the said assent of said parties hereto was not refiled by said Ulrici, or by any other person, and the assent of said parties hereto was not heard or given to the conveying of said business by said Ulrici or to a preference of the title of the United States over the time of said deed of trust, in the event of a forfeiture of said distillery. And said (parties show) further that on the first day of May of each succeed-
123 ing year since said first day May, 1869, the said Ulrici has given to the assessor and collector of said collection district, notice of his intention to continue and carry on said business of a distiller, and on said days under such notice a new bond of said Ulrici, as such distiller, has been duly approved, but that the assent of the parties hereto has not been obtained, given, or filed in connection with such notice, or in any manner whatsoever since said twenty-ninth day of September, 1868, and said parties hereto have in no manner or form assented to or given to the title of the United States a preference over said lien of said deed of trust in the event of the forfeiture of said distillery premises.

Wherefore said parties say that they have a valid and subsisting interest and estate in said distillery premises and appurtenances hereinbefore described, and therefore they enter their appearance herein and pray to be allowed to defend.

KRUM & MADILL,
For said Intervenors.

UNITED STATES OF AMERICA:

John M. Krum, for his cointervenors and himself, makes oath
124 and says that the foregoing claim and matters therein as stated he believes to be true.

JOHN M. KRUM.

Subscribed and sworn to by said affiant before me at office, in St. Louis, Missouri, this 6th day of August, A. D. 1875.

F. A. WERNER,
Comm'r U. S. Circuit Court, Eastern Dist. of Missouri.

125 On the 30th day of September, A. D. 1875, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES EX REL., &C.,
vs.
1,218 BARRELS OF SPIRITS ET ALIA. } 554.

Now comes the district attorney on behalf of the United States, and, on motion, leave is granted to amend information herein.

126 And afterwards, to wit, on the 21st day of October, A. D. 1875, the following further proceedings were had and appear of record in said cause, to wit:

UNITED STATES EX REL. LUCIAN HAWLEY,
plaintiff,
vs.
1,218 BARRELS OF SPIRITS ET ALIA, RUDOLPH W. ULRICI, claimant. } 554.

This day comes the district attorney, on behalf of the United States, and also comes Rudolph W. Ulrici, by his attorneys, Noble and Orrick, and by leave of court withdraws his demurrer herein, and the said Rudolph W. Ulrici, having failed to further plead herein, makes default; and thereupon, on motion of said district attorney, it is ordered that the default of said Ulrici be entered of record, whic' is accordingly done.

127 And afterwards, to wit, on the 4th day of January, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

UNITED STATES EX REL., &C.,
vs.
1,218 BARRELS OF SPIRITS ET ALIA. } 554.

Now comes Richard W. Ulrici, by his attorney, and files intervening claim and answer herein.

128 *Intervening claim & answer of Richard W. Ulrici in case No. 554.—Jan.* 4, 1876.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of said United States in and for said district.

UNITED STATES EX REL., &C.,
vs.
1,218 BARRELS OF SPIRITS ET ALIA. } No. 554.

Now comes Richard W. Ulrici, and intervening in the above-entitled cause for his interest in said property, respectfully represents—

First. That he has heretofore filed and perfected his claim herein.

Second. That your petitioner, said Richard W. Ulrici, is and has at all times, stated in said information as the times of the said several violations of said revenue laws, been and was prior thereto the owner in fee-simple, absolute of all said real estate described in said information, except said portion described as 74 feet and 6 inches front on Cedar street, by 118 feet deep; that is to say, he is and has been at all times as aforesaid the owner in fee-simple, absolute of all that real property seized
129 and proceeded against & described as follows: being in block 42, commencing on Cedar street, 74 feet and 6 inches east of a private alley; thence east to Main street; thence south to Mulberry; thence westward to Second street; thence north 120 feet to Eberle, together with all improvements thereon, saving the buildings extending along Cedar to Main and back on Main 80 feet, more or less.

Third. That heretofore by lease duly recorded, your petitioner leased said premises to said Rudolph W. Ulrici, which leasehold interest, & no other, continued in said Rudolph under the terms of said lease, and its renewals to the present time, or the date of said seizure, as shown by the said lease & its renewals here to the court shown.

Fourth. That heretofore and on the first days of May in each year during the time mentioned in said information, the said Rudolph W. Ulrici did make, with good sureties, sufficient bonds to said United States for its protection from loss, because of said household interest & said use of said premises; copies of said leaseholders' bonds are herewith filed.

Fifth. That said distillery described in said information is sit-
130 uated on other than the said premises herein described, for the most part, and none of said distillery is upon the real estate herein described, save a small margin on the northwest line, next to the property of said Rudolph W. Ulrici; that the premises herein described are not used for ingress or egress to said distillery, and your petitioner has at no time known or connived at any illegal conduct of said business of distilling on or about said premises by any person at any time.

Sixth. That the premises have not been forfeited by anything in said information alleged, and your petitioner is entitled by law to the restoration of his said property, free & clear of any lien or demand, claim, or forfeiture asserted by said United States, and he accordingly prays & for such other relief as to the court may seem meet.

NOBLE & CRRICK,
Of's & Att'ys.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Richard W. Ulrici, being duly sworn, on his oath says the foregoing answer & interplea and pleading, and the matters therein as stated, are true as he verily belie's.

RICH'D W. ULRICI.

Subscribed & sworn to this 4th Jan'y, 1876.

C. M. WARD,
U. S. Commissioner, East. Dist. of Mo.

131 *Release of real estate of Richard W. Ulrici.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of said United States in & for said district.

UNITED STATES EX REL., &C..)
vs.
1,218 BARRELS OF SPIRITS ET AL.)

The information and proceedings are hereby dismissed as to the real estate claimed by Richard W. Ulrici, which real estate is described in said Ulrici claim. The proceedings against any machinery, utensils, or personal property on said real estate are not hereby dismissed, nor is any possession thereof by United States marshal to be released or in any wise affected. The right of the said Richard W. Ulrici having been sustained by the court in an opinion delivered in the matter of the claim of Dow & Co.

DAVID P. DYER,
U. S. Att'y.

132 And afterwards, to wit, on the 7th day of January, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES EX REL., &C.,)
vs. } 554.
1,218 BARRELS SPIRITS ET ALIA.)

This day comes David P. Dyer, esquire, district attorney, on behalf of the United States, and moves the court for an order of sale pending the litigation of this cause of the 1,218 barrels of distilled spirits seized under due process of this court. It is thereupon ordered by the court, by consent of the claimants herein, that said 1,218 barrels of distilled spirits be sold by the marshal of the United States for the eastern district of Missouri, to the highest bidder, at public auction, in the city of St. Louis, first giving fifteen days' notice of the time, place, terms of sale, and a description of the property to be sold, by publication in the St. Louis Republican, a daily newspaper published in the city of St. Louis, in said district, and that the terms of said sale be for cash. It is further ordered that a writ of venditioni exponas be issued in accordance with this order, and that the proceeds of such sale be paid into the registry of this court.

133 *Statement of the serial numbers and No. of wine and proof gallons in a lot of thirty-three barrels of spirits sold by me at marshal's sale, January 21, 1876, at the warehouse C. H. Teichman, to Messrs. Kilyman & Co.*

Serial numbers.	No. of wine gal.	No. of proof gal.	
13272	40	40	40
3	39	39	39
4	40	39.20	39
5	42	41.58	42.60
7	39	40.95	41
13278	40	40	40.81
19758	32	33.92	34
17812	34	36.04	36
17805	34	35.36	35
17810	37	39.22	39
13725	44	46.64	47
6	37½	39.75	40
7	37	38.48	38
8	36½	38.69	39
9	37½	39.00	39
30	38	40.28	40
1	36	38.16	38
2	43½	44.37	44
3	41	43.46	45
4	36½	38.69	39
5	39½	41.87	42
6	39	41.34	41
7	38	40.28	40
8	38½	40.81	41
9	36½	38.69	39
40	40½	42.93	43
1	39	41.34	41
2	39½	41.47	41
3	00	00	Emptied into others.
4	40	42.80	43
5	39½	41.87	42
6	40½	42.93	43
13747	40½	42.93	43
			1,291
			90
			116,190

(On the margin:) All withdrawn February 5, 1876.

H. W. LEFFINGWELL,
U. S. Marshal, Eastern Dist. of Mo.
By C. E. SOEST, *Deputy.*

134 *Statement of the serial numbers, No. of wine and proof gallons in a lot of ten barrels spirits sold by me at marshal's sale January 21, 1876, at the warehouse of C. F. Teichman, to Messrs. Endres & Co.*

Serial numbers.	Wine galls.	Proof galls.	
13750	38½	40.81	41
60	40½	42.93	43
13137	38½	40.81	41
8	39½	41.47	41
13139	38½	40.81	41
13253	38	38.00	38
4	42	42.00	42
5	39	39.00	39
6	40	40.00	40
7	41	40.59	41
			407
			90
			366.30

(On the margin:) Withdrawn Feb'y 23, 1876.

H. W. LEFFINGWELL,
U. S. Marsh., E. D. of Mo.,
By C. E. SOEST, *Deputy.*

135 *Statement of the serial numbers and wine and proof gallons in a lot of twenty-two barrels of spirits sold by me at marshal's sale January 21st, 1876, at the warehouse of C. H. Teichman, to Michael O'Lochlin.*

Serial numbers.	Wine gallons.	Proof gallons.	
13259	41	40.59	41
60	41	42.74	43
1	37	39.00	39
2	36	35.28	35
3	42	40.32	40
5	42	40.74	41
6	40	40.00	40
7	38	39.14	39
8	40	40.00	40
9	42	39.90	40
70	41	41.00	41
1	40	40.00	40
13748	40½	42.46	42
9	40	42.80	43
50	40	42.80	43
1	40	42.40	42
2	38	40.28	40
3	40	42.40	42
4	39½	41.87	42
5	39½	41.87	42
6	36	38.16	38
13757	40	42.40	42
			895

(On the margin:) All withdrawn Jan'y 25, 1876. Tax. $805.50.

H. W. LEFFINGWELL,
U. S. Marshal, E. D. of Missouri,
By C. E. SOEST, *Deputy.*

136 And afterwards, to wit, on the 5th day of February, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, PLAINTIFF,
vs. } 554.
1,218 BARRELS OF SPIRITS, &C.

This day comes H. W. Leffingwell, esquire, marshal of the United States for the eastern district of Missouri, and presents to the court his report of sale of the property sold herein by virtue of a writ of venditioni exponas, heretofore issued out of this court. And thereupon it is ordered by the court that said sale be and the same is hereby in all things confirmed.

137 *Writ of venditioni exponas in case of No. 554.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to the marshal of the United States for the eastern district of Missouri, greeting:

Whereas an information was filed in the circuit court of the United States in and for the eastern district of Missouri on the 4th day of June, A. D. 1875, by David P. Dyer, esquire, attorney of the United States for said district suing on behalf of said United States at the relation of Lucien

Hawley, supervisor of internal revenue, specially authorized against 1,218 barrels of spirits et alia

And whereas; of the said property seized herein, viz, 1,218 barrels of spirits, the same has been ordered to be sold, pending the litigation in this cause, to the highest bidder, at public auction, at the city of St. Louis, in said district, upon giving at least fifteen days' public notice of the time, place, terms of sale, and a description of the property to be sold, by publication in the St. Louis Republican, a daily newspaper published in the city of St. Louis, in said district, and that the terms of said sale be for cash:

Now, therefore, you are hereby commanded to cause the said
138 1,218 barrels of spirits aforesaid to be sold in manner and form, at the time and place, upon the notice, and on the terms and conditions ordered by said court as hereinbefore set forth, and you will pay the proceeds of such sale into the registry of this court, and have you also this writ, with an account of your proceedings thereon, before said court on the third Monday of March next.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighth day of January, A. D. 1876.

Issued at office, in the city of St. Louis, under the seal of said circuit court the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk.*

UNITED STATES OF AMERICA,
Eastern Dist. of Missouri, ss:

I have executed the above writ by giving public notice of the time, place, & terms of sale, in the St. Louis Republican, a daily newspaper published in the city of St. Louis (a copy of said advertisement is hereto attached & made a part of this return), and that I have sold the above described property at public auction on the 28th day of January, 1876, at St. Louis, in said district, to the following named persons, they being the highest & best bidders for the same:

139 Steinwinder & Son:

50 B'r'ls, 2,149.49 proof gallons, @ 1.09½					$2,353 69
S. W. Hastings:					
9 B'r'ls, 397.70	"	"	@ 1.08	429 52	
16 " 673.51	"	"	" 1.09	734 13	
100 " 4,227.23	"	"	" 1.10	4,649 95	
					5,813 60
Charles Thiet:					
5 B'r'ls, 224.21	"	"	" 1.09	244 39	
5 " 216.87	"	"	" 1.08¼	234 76	
					479 15
Philip Stick:					
33 B'r'ls, 1,456 71	"	"	" 1.08	1,573 25	
25 " 1,034.28	"	"	" 1.08¼	1,119 61	
					2,692 86
Geo. H. Tette:					
25 B'r'ls, 1,035.14	"	"	" 1.11	1,150 12	
25 " 1,070.50	"	"	" 1.09½	1,182 05	
					2,332 17
Tyra Hill & Co.:					
4 B'r'ls, 1,775.21	"	"	" 1.09	1,934 98	
20 " 850.20	"	"	" 1.09¼	941 92	
25 " 1,115.04	"	"	" 1.08⅝	1,212 60	
					4,089 50
J. H. Rothmann & Co.:					
25 B'r'ls, 1,072.47	"	"	" 1.10½		1,185 08

E. Repretto:					
14 B'r'ls, 595.11	"	"	" 1.08½		645 70
Gregory & Stagg:					
197 B'r'ls, 8,535.07	"	"	" 1.09	9,263 13	
214 " 14,347.20	"	"	" 1.03½	14,880 40	
50 " 2,283.91	"	"	" 1.07½	2,455 20	
325 " 21,460.90	"	"	" 1.03½	22,102 03	
					48,700 76
					$68,292 51

140 H. W. LEFFINGWELL,
U. S. Marshal, E. D. Mo.,
By JAMES B. GEGGIE, *Deputy.*

I know of no reason why the above sale should not be approved. The marshal informs me that the property above described has brought a fair price.

Feb'y 5, 1876.

D. P. DYER,
Dist. Att'y.

Marshal's amended return.

UNITED STATES OF AMERICA,
Eastern Dist. of Missouri, ss:

Case No. 554, U. S. circuit court.

UNITED STATES EX REL. L. HAWLEY }
vs. }
1,218 BARRELS SPIRITS ET ALIA. }

In the above case I beg to withdraw the return heretofore made and to substitute the following amended return:

Aggregate amount of sale of 1,218 bls. spirits		$68,472 34
Amount tax paid on same	58,172 40	
Amount hereby paid by me into registry of said court	10,299 94	
		$68,472 34

H. W. LEFFINGWELL,
U. S. Marshal,
By JAMES B. GEGGIE, *Deputy.*

ST. LOUIS, MO., *March* 16, 1876.

141 And afterwards, to wit, on the 20th day of March, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, EX REL., }
vs. } 554.
1,218 BARRELS SPIRITS ET ALIA. }

Now comes H. W. Leffingwell, esquire, United States marshal, and by leave of court amends his return to the venditioni exponas issued herein.

142 And afterwards, to wit, on the 6th day of April, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

U. S. ex rel. Lucian Hawley
vs. } 554.
1,218 Barrels Spirits et alia.

Now comes David P. Dyer, esquire, United States attorney, and files exceptions and demurrer to claim of David Dows et al.

143 *Exceptions & demurrer to claim of D. Dows & Co. et al.—Filed April 6th, 1876.*

In the circuit court of the United States for the eastern district of Missouri.

The United States, ex rel.,
vs.
1,218 Barrels of Distilled Spirits et alia.

Now come the United States and except and demurs to the claim of David Dows et al. intervening herein, & for cause show:

1. That said intervenors show no claim to the property therein mentioned superior to that of the United States under the allegations of the informations herein.

2. Said intervenors expressly disclose a waiver of any rights or claim to said property as against the United States.

3. Said intervenors disclose no reason why any removal of said waiver was or is necessary on their part to subordinate their claim to that of the United States.

4. That the claim of said intervenors being that only of mortgage's no waiver on their part was needful to subordinate their rights to those of the United States.

5. That in permitting the property in question to be used for distillery purposes the intervenors waived their rights as 'gainst the United States.

144 6. That as against the mortgage claim of said intervenors the claims of the United States to a forfeiture under the allegations of the information are paramount.

7. That no cause is shown in law by said answer & claim why the claim made by the intervenors can prevail against the United States for the causes of forfeiture set forth in the information.

DAVID P. DYER,
U. S. Att'y.

145 And afterwards, to wit, on the 8th day of April, A. D. 1876, the following further proceedings were had and appear of record in said case, to wit:

The United States, ex rel.,
vs. } 554.
1,218 Barrels Spirits et alia.

Now come David P. Dyer, esquire, on behalf of the United States, and David Dows & Co., by their attorneys, Messrs. Noble & Orrick, and the

exceptions and demurrer to the claim of David Dows & Co., heretofore submitted, having been examined and considered by the court, is of the opinion that the law upon said demurrer is against said claimants, and said demurrer is hereby sustained, and on motion of the district attorney leave is granted to amend information on or before April 11th, the claimants to answer amended information.

146 And afterwards, to wit, on the 18th day of April ,18*th*, 1876, the following further proceedings were had and appear of record in said cause, to wit:

U. S. EX REL. LUCIAN HAWLEY)
vs.
1,218 BARRELS OF SPIRITS ET ALIA.)

Now come David Dows & Co. by their attorneys, Messrs. Krum & Madill, and file answer to the information herein.

147 *Answer of David Dows, rel. in case No.* 554.—*Filed April* 18, 1876.

In the circuit court of the United States for the eastern district of Missouri.

THE UNITED STATES AT THE RELATION OF LUCIAN HAWLEY *against* 1,218 BARRELS OF SPIRITS ET ALIA. } Information. No. .

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

And now come David Dows, J. Dows, Mairs, and Alexander E. Orr, who compose the firm of David Dows & Company, and John M. Krum, who have heretofore intervened herein and filed their claim to certain portions of said property described in and covered by said information (the said portions of said property being fully set forth and described in said claim), and by leave of court first had and obtained, file their answer to the said information filed herein, and therefore they say:

That it is not true as alleged in the first article of said informa-
148 tion that the said property described in said information, or any part thereof, was seized by the said Lucian Hawley, or that he was specially or otherwise authorized to make such seizure, and that it is not true that the said property ever was in the possession of said Hawley.

That it is not true, as alleged in the second article of said information, that the property described in said information was on the first day of March, 1873, or at any time subsequent to the twenty-seventh day of August, 1867, the property of said Rudolph W. Ulrici, except as to such parts thereof *and* are not embraced within the description hereinafter contained; and as to the matters contained in the third, fourth, fifth, and sixth articles of said information the said claimants make the same answer.

That as to the matters and allegations contained in the seventh, eighth,

ninth, tenth, and eleventh articles, the said claimants have no knowledge or information sufficient to form a belief.

And as to the matters alleged in the twelfth and thirteenth articles of said information, the said claimants say that it is not true that between the first day of January, 1873, and the tenth day of May,
149 1875, or at any time subsequent to the twenty-seventh day of August, 1867, the said Rudolph W. Ulrici was the owner of the still, boilers, and other vessels described in the said articles of said information.

And further answering, said claimants say:

That by his certain deed, known as a deed of trust, bearing date the twenty-fourth day of May, 1867, Rudolph W. Ulrici, who was then the owner in fee-simple of the property hereinafter described, did convey to the said John M. Krum the following described property, situated in the city of St. Louis and State of Missouri, to wit: A piece or parcel of ground lying and being in block number forty-two, in the city of Saint Louis, commencing at a point in the southern edge of Cedar street, where the eastern edge of a private alley as laid out by the late Thomas T. Smith intersects said Cedar street; thence running easterly seventy-four feet and five inches (74.5″) along the southern edge of Cedar street; thence southwardly and parallel with said alley one hundred and eighteen feet, more or less: to the east and west centre-line of said block; thence westwardly seventy-four feet and five inches (74.5″) along the center line of
150 said block to a point where the same intersects the eastern edge of said alley; thence northwardly one hundred and eighteen feet, more or less, along the eastern edge of said alley to the place of beginning. Said piece of ground being bounded on the north by Cedar street, east and south by Rich'd W. Ulrici, and west by said alley; together with all the buildings thereon erected and the machinery, tools, and fixtures therein contained, and being made for a distillery; likewise a two-story brick building on the south side of Cedar street, east of and adjoining the above-described property, forming part of the distillery, containing machinery, mash, and fermenting tubs; likewise all those buildings and their contents, east thereof and adjoining the above-described property, the fermenting house south thereof, made of brick, with gravel roof, and fermenting tubs therein contained; all forming a part of the distillery; likewise the brick cow-stables, south thereof, all the slop-boxes on the premises, the sheds in the yard; likewise the malt-houses and kiln east of the stone warehouse, and the fixtures only of the malt-house south thereof; a cemented cellar in the stone warehouse, stables, carts, wagons, harnesses, and tools,
151 which belonged to the old distillery of Dreyer and Ulrici, as well as all other articles on the premises and forming part of the distillery, and herein mentioned, and which have been added since; that said deed of conveyance was so made by said Ulrici to secure the payment of a negotiable promissory note, bearing even date with said deed, made by said Ulrici, for the sum of sixty-four thousand three hundred and eighty-three dollars and nine cents, and payable to the order of said David Dows and Company ninety days after date; that said note so made by said Ulrici and so secured by said deed was delivered by said Ulrici to said David Dows and Company, and that the said David Dows, J. Dows Mairs, and Alexander E. Orr, composing said firm as aforesaid, are now the legal holders and owners thereof.

And said claimants & intervenors state further that said deed contained the following condition, among others, to wit, that if said promissory note should be punctually paid at maturity, then the property aforesaid should be released at the cost of said grantor, but if said promissory note should be allowed to remain due and unpaid, then said deed should remain in full force; that said deed vested in the said John M. Krum a
152 power of sale, at the instance and request of the legal holder of said note, the time, place, and conditions of such sale having been fixed by the terms of said deed, as will more fully appear by a reference to said deed, which is filed herewith and marked "Exhibit A."

And the said parties, claimants & intervenors, state further that the said real estate hereinbefore described, and which is covered by said deed of trust, is, together with the buildings and improvements situated thereon, the same real estate, buildings, and improvements which have been seized in said cause for the grounds of forfeiture alleged in said information filed herein; and that besides said real estate, buildings, and improvements, the following articles and property, which constitute a part of said distillery premises, and which are appurtenant thereunto, and which have been seized in said proceeding, are covered by the lien of said deed of trust, to wit: Two sets of boilers, each five double-tube boilers; one line of iron shafting; three sets of connecting gear; two iron water-pipes; two single-cylinder engines; two sets of gearing of engines; one broad belt; four narrow belts; one doctor engine; one steam-pump for water; one blacksmith vise; one blacksmith anvil; one blacksmith bellows; eleven iron steam-pipes; one copper beer-pipe;
153 two iron water-pipes; four high-wine pipes; one low-wine pipe; one large copper still; one spirit receiver; one small wood still; two four-inch water-pipes; two beer wells; two beer pipes; one beer trough; one force-pump; five water-pipes; one line shafting; one set connecting pulleys; one alcohol column; one small alcohol column; one large wood still; one large wood worm tub; one high-wine tub; two low-wine tubs; eight high-wine pipes; two separators; one low-wine pipe; five water-pipes; one spirit cistern for alcohol column; two small worm tubs; one large water tub; four water-pipes; two worm tubs and worms; one wood still; four broad belts; three sets of pulleys; one set of gearing (extra large); five grain elevators; one elevator bin; one hand pump; two steam-pipes; one crane; one large worm tub and worm; one wood doubler; one beer heater; one large wood still; three large iron beer pipes; two low-wine pipes; seven water-pipes; three lines of shafting; two sets of gearing; one low-wine still; four lines of shafting; one screening mill; two fanning mills; seven sets of gearing; one sifter; four sets of gearing; one grain screen; one line shafting; one set gearing; one meal
154 cistern; two meal conductors; two large water-tanks; one lot large copper pipe; five iron water-pipes; three meal tubs; one blower; two copper worms; six water-pipes; one hot-water tub; one six-inch copper pipe; one line of shafting; four sets gearing; one steam-pump; three small mash tubs; eight yeast tubs; three line water-pipes; two line steam-pipes; sixteen large fermenting tubs; four large vats for spirit beer; one refrigerator containing three copper yeast retorts; five copper kettles; five wooden tubs; one copper yeast retort; two fermenting tubs; one large fermenting tub; four small fermenting tubs; two

small fermenting tubs; four receiving cisterns, spirit pipes and branches; one governor; one steam-pump and gearing.

And said claimants and intervenors state further that the said David Dows, J. Dows Mairs, and Alexander E. Orr, and one Van Deusen Mairs, now deceased, were, on the tenth day of September, A. D. 1868, the lawful owners of said note so secured by said deed of trust, and on said day composed the firm of David Dows and Company; that the said firm had theretofore loaned to the said Ulrici, and advanced to him in good faith the sum of money evidenced and called for by said note, and that on said tenth
155 day of September, 1868, the said note was past due and unpaid, and the condition of said deed of trust above recited thereby broken. And the said parties state that on or about the said tenth day of September, A. D. 1868, the said Rudolph Ulrici, then being about to engage in and continue the business of a distiller upon the premises hereinbefore described, did, in conformity to the statute for such case made and provided procure from the said David Dows, John D. Mairs, Alexander E. Orr, and Van Deusen Mairs, the following instruments in writing, to wit: We David Dows and Co., of the city of New York, merchants, the parties beneficially interested in a certain deed of trust made by Rudolph W. Ulrici to John M. Krum, trustee, etc., dated the twenty-fourth day of May, A. D. 1867, of and for certain distillery property situated in the city of Saint Louis, State of Missouri, in said deed of trust particularly described and conveyed for the uses and purposes in said deed mentioned, do hereby covenant that the premises described in said deed of trust may be used for the purpose of distilling spirits, subject to the provisions of law, and do hereby stipulate that the lien of the United States for taxes and penalties hereafter accruing shall have priority of such deed of trust and that
156 in case of the forfeiture of the distillery premises or any part thereof the title of the same shall vest in the United States discharged from said deed of trust.

Dated New York, September 10, 1868.

DAVID DOWS,
JOHN D. MAIRS.
A. E. ORR,
VAN DEUSEN MAIRS,
Per JOHN D. MAIR, *Att'y.*

Which said instrument was duly acknowledged by said parties, and on the twenty-ninth day of September, 1868, was by said Ulrici filed with the assessor for the first collection district of Missouri in conformity to the act of Congress entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 20th, 1868. And the said parties respectfully show farther that on said twenty-ninth day of September, 1868, the said Ulrici gave notice to said assessor of his intention to continue the business of a distiller within said collection district, and with such notice filed the said document hereinbefore recited, and that the said document was thereupon caused by said assessor to be placed of record in the office of the recorder of deeds in and for the county
157 of Saint Louis within said district; that upon the filing of said notice and said assent of said parties the bond of said Ulrici as a distiller was duly approved, and he proceeded to carry on and did carry

on the business of a distiller within said district until the first day of May of the next succeeding year, to wit, the first day of May, 1869, when the said Ulrici again gave notice of his intention to continue the business of a distiller, and again gave bond which was duly approved, but the said assent of said claimants and intervenors was not refiled by said Ulrici or by any other person, and the assent of said claimants and intervenors was not had or given to the carrying on of said business by said Ulrici, or to a preference of the title of the United States over the lien of said deed of trust, in the event of a forfeiture of said distillery.

And said claimants state further that on the first day of May, 1869, the said Ulrici has given to the assessor and collector of said collection district notice of his intention to continue and carry on said business of a distiller, and on said days, under such notices, a new bond of said Ulrici as such distiller has been duly approved, but that the assent of the said claimants and intervenors has not been obtained, given, or filed in
158 connection with such notice or in any manner whatever since said twenty-ninth day of September, 1868, and said claimants and intervenors have in no manner or form assented to or given to the title of the United States a preference over said lien of said deed of trust in the event of the forfeiture of said distillery premises.

Therefore said claimants and intervenors say that the said real and personal estate hereinbefore described did not become forfeited to the user in said information described, and pray that said property may be released from said supposed seizure and detention.

KRUM & MADILL,
Attorneys for Claimants.

John M. Krum, having been duly sworn in his own behalf, and as agent and attorney of his coclaimant and intervenor, states that the matters and things stated in the foregoing answer which are within his own personal knowledge are true, and that as to such matters which have been stated upon information obtained from his coclaimant and intervenors he believes them to be true.

JOHN M. KRUM.

Subscribed and sworn to before me this 18th day of April, A. D. 1876, at office, in St. Louis, Missouri.

F. A. WERNER,
Comm'r U. S. Circuit Court, Eastern District of Missouri.

159 And afterwards, to wit, on the 25th day of April, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, EX REL., }
vs. } 554.
1,218 BARRELS SPIRITS ET ALIA. }

Now comes Wm. A. Bliss, esquire, assistant United States attorney, and files motion for a rule on David Dows et al. to give additional security for costs, whereupon it is ordered that said David Dows & Co. show cause, on or before April 28th why they should not give additional security for costs.

160 *Motion for order upon David Dows et al., claimant, for additional security for costs in case # 554.—Filed April 24, 1876.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States for the eastern district of Missouri.

THE UNITED STATES, EX REL. HAWLEY,
vs.
1,218 BARRELS SPIRITS ET ALIA.

Now comes David P. Dyer, attorney of the United States for said district, and says that the stipulation for costs heretofore filed by David Dows et al., claimants herein, is insufficient as to amount. Said attorney therefore asks that said claimants be ordered to furnish additional security for costs herein.

DAVID P. DYER,
U. S. Att'y.

161 And afterwards, to wit, on the 12th day of May, A. D. 1876, the following further proceedings were had and appear of record in the said cause, to wit:

THE UNITED STATES, EX REL.,
vs.
1,218 BARRELS SPIRITS ET ALIA. } 554.

This day comes Richard W. Ulrici, claimant, by his attorneys, Messrs. Noble & Orrick, and files release to real estate seized herein.

162 *Writ of restitution.—Issued June 19th, 1876.*

THE UNITED STATES OF AMERICA,
Eastern District of Missouri;

The President of the United States of America to the marshal of the United States in and for said district, greeting:

Whereas an information has been filed in the circuit court of the United States for the eastern district of Missouri, on the 4th day of June, A. D. 1875, by David P. Dyer, esquire, attorney of the United States for said district, on behalf of the United States, against 1,218 barrels of spirits et alia, praying that the same may be condemned and forfeited to the said United States;

And whereas the said property has been attached by the process of said court, in pursuance of the prayer of said information, and is now in your custody by virtue of said process;

And whereas, also, a claim has been interposed and filed in said court by Richard W. Ulrici as the owner of certain real estate seized herein, and such proceedings have been thereupon had that by the final sentence and decree of said court in this cause, made and pronounced on the 7th day of

June, A. D. 1876, the said real estate, to wit, commencing on Cedar street, 74 feet 6 inches east of a private alley; thence east to Main street; 163 thence south to Mulberry street; thence westward to Second street, thence north 120 feet to Eberle, together with the improvements thereon, saving the buildings extending along Cedar street to Main street 80 feet, more or less, and not including any machinery or utensils, was adjudged to belong as claimed and was ordered to be restored to the said claimant:

Therefore, you, the said marshal, are hereby commanded to release the said real estate hereinbefore described from arrest, and to restore and deliver the same unto the said Richard W. Ulrici, and what you shall have done in the premises do you make return thereof, together with this writ, on the first Monday of July, A. D. 1876.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 17th day of June, A. D. 1876. Issued at office in the city of St. Louis, under the seal of said circuit court the day and year last aforesaid.

[SEAL.]

M. M. PRICE, *Clerk*,
By A. P. SELBY, *Deputy*.

164 And afterwards, to wit, on the 5th day of June, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

UNITED STATES, EX REL.,
vs. } 554.
1,218 BARRELS SPIRITS ET ALIA.

Now comes the district attorney, on behalf of the United States, and files demurrer to the answer of David Dows et al.

165 *Demurrer to answer of David Dows in case No. 554.—Filed June 5, 1876.*

UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of the United States for the eastern district of Missouri, at the March term thereof, A. D. 1876.

THE UNITED STATES, EX REL., &C.,
v. } No. 554.
1,218 BARRELS OF SPIRITS ET ALIA.

Now comes David P. Dyer, attorney of the United States for the said district, and says that the answer of said David Dows et alia herein, does not in law constitute a sufficient defense to the information of the said United States herein.

166 *Agreed statement in case* = 554.—*Filed June 7th*, 1876.

In the circuit court of the United States for the eastern district of Missouri.

THE UNITED STATES, EX REL., &c., }
against } No. 554.
1,218 BARRELS SPIRITS ET ALIA. }

In the above-entitled cause, the United States, plaintiffs, and David Dows, J. Dows Mairs, Alexander E. Orr, and John M. Krum, claimants, hereby waive a jury and agree that the cause may be submitted for determination by the court upon the following statement of facts:

First. The distillery, distillery premises, and other property described in the information were duly seized by Lucien Hawley, under special authority of the Commissioner of Internal Revenue, on the tenth day of May, A. D. eighteen hundred and seventy-five, said premises being situated and said seizure being made within the eastern district of Missouri.

Secondly. That the allegations contained in the second, third, fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth articles of the information are true, subject, however (as far as concerns
167 averments of ownership of the property therein described), to whatever qualification of the court may find to be imposed by the existing deed of trust in favor of said claimants, as hereinafter stipulated.

Thirdly. That on the twenty-fourth day of May, A. D. 1867, Rudolph W. Ulrici, who was then the owner thereof, did, by his certain deed, known as a deed of trust or deed in the nature of a mortgage, convey to John M. Krum, one of the claimants, the real estate described in the information, together with all the buildings thereon erected, and the machinery, tools, and fixtures therein contained, and all and singular the property more fully described in the answer of the claimant.

That said conveyance was so made to secure to said David Dows, Alexander E. Orr, and J. Dows Mairs, who compose the firm of David Dows and Company, the payment of a certain promissory note for the sum of sixty-four thousand, three hundred and eighty-three dollars, and nine cents, made by said Ulrici and delivered to said Dows & Company, which note bore date May 24, 1867, and was payable ninety days after date.

168 That said note now remains unpaid, and that the lien of the deed of trust has never been released by claimants as to said Ulrici.

That the allegations of the answer of the claimants are true in regard to proceedings had by Ulrici and the claimants in relation to this deed of trust under the internal revenue laws, and that the assent of the claimants set out in the answer was given them at the time, in the manner, and under the circumstances mentioned in the answer, and at no other time, in no other manner, and under no other circumstances.

That the claimants David Dows, Alexander E. Orr, and J. Dows Mairs are the owners of the note secured by said deed of trust.

DAVID P. DYER,
Attorney of the United States.
KRUM & MADILL,
For Claimants.

169 And afterwards, to wit, on the 7th day of June, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, EX REL. LUCIAN HAWLEY,
vs. } 554.
1,218 BARRELS OF SPIRITS ET ALIA.

Now comes David P. Dyer, district attorney, on behalf of the United States, and also come David Dows, J. Dows Mairs, and Alexander E. Orr, claimants, by their attorneys, Messrs. Krum and Madill, and the said district attorney, by leave of the court, withdraws the demurrer to the answer of said claimants, and thereupon this cause is submitted to the court for trial without the intervention of a jury, upon an agreed statement of facts filed by said parties and the pleadings herein, on consideration whereof the court finds that the real estate in the information described and seized under the warrant of arrest and monition issued herein is not charged with the mortgage lien set up and claimed in the answer of said claimants.

And all that portion of said real estate claimed by Richard W.
170 Ulrici herein has been and is hereby declared to be released from any forfeiture because of anything in said information contained, the same being as follows: Commencing on Cedar street 74 feet 6 inches east of a private alley; thence east to Main street; thence south to Mulberry street; thence westward to Second street; thence north 120 feet to Eberle; together with the improvements thereon, saving the buildings extending along Cedar street to Main street, 80 feet, more or less, and not including any machinery and utensils.

And now, on motion of the district attorney, it is ordered, adjudged, and decreed that the property seized in this cause, and set forth in said warrant of arrest and monition, viz:

2 sets of boilers, each 5 double tube boilers.
1 line of iron shafting.
1 lot of coal, about 12 tons.
3 sets connecting gear.
2 iron water-pipes, 3-inch.
5 fire pokers.
1 lot iron grate bars.
1 lot rubber hose (50 feet).
3 sledge hammers.
2 shovels.
2 single cylinder engines.
2 sets gearing for engines.
1 broad belt.
4 narrow belts.
1 copper oil-holder.
1 doctor engine.
1 steam pump for water.
1 blacksmith vise.
1 blacksmith anvil.
1 blacksmith bellows.
1 lot blacksmith tools.

1 roll lamp-wick.
11 iron steam pipes.
1 copper beer pipe.
75 feet rubber hose, small.
171 2 iron water-pipes.
4 high-wine pipes.
1 low-wine pipe.
1 lot engine tools, packing, &c.
1 large copper still.
1 spirit receiver.
1 small wood still.
2 4-inch water-pipes.
2 beer wells.
2 beer pipes.
1 beer trough.
1 force-pump.
5 water-pipes.
1 line of shafting.
1 set of connecting pulleys.
1 alcohol column.
1 alcohol column, small.
1 large wood still.
1 large wood worm-tub.
1 high-wine tub, 86 gallons.
2 low-wine tubs, 198 and 270 gallons ea.
8 high-wine pipes.
2 separators.
1 low-wine pipe.
5 water-pipes.
1 lot rubber hose, about 125 feet, 2-inch.
3 large lanterns.
1 lot tools, paints, &c.
1 spirit cistern for alcohol column.
1 small worm-tub.
1 small worm-tub.
1 large water-tub.
4 water-pipes.
2 worm-tubs and worms.
1 wood still.
262 bags of corn.
3 barrels lime.
1 grindstone.
4 broad belts.
3 sets of pulleys.
1 set of gearing, extra large
5 grain elevators.
1 elevator bin.
1 lot of old iron.
1 truck (hand).
1 hand pump.
2 steam-pipes.

4 sets of burrs.
1 lot mill picks, about 24.
3 lots of old belting.
4 cog-wheels, disconnected.
1 crane.
1 large worm-tub and worm.
1 wood doubler.
1 beer heater.
1 wood still, large.
3 large iron beer pipes.
2 low-wine pipes.
7 water-pipes.
1 lot corn bags.
1 large rope and pulleys.
3 lines of shafting.
2 sets of gearing.
1 turning lathe.
1 bin of corn, about 200 bushels.
1 low-wine still, 270 gallons.
4 lines of shafting.
172 1 screening mill.
1 lot old rope.
4 belts and pulleys.
2 fanning mills.
7 sets of gearing.
1 sifter.
4 sets of gearing.
4 bands and pulleys.
1 grain screen.
1 line of shafting.
1 set of gearing.
1 hopper and steelyards.
1 small Fairbanks scales.
2 lots of meal bags.
1 meal cistern.
2 meal conductors.
2 large water tanks.
1 lot large copper pipes.
5 iron water-pipes.
3 meal tubs.
1 blower.
2 copper worms, small.
6 water-pipes, large.
1 hot-water tub.
1 6-inch copper pipe, about 30 feet.
1 line of shafting.
4 sets of gearing.
1 steam pump.
3 small mash tubs for yeast.
8 yeast tubs.
3 line water-pipes.

2 line steam-pipes.
16 large fermenting tubs.
4 large vats for spirit beer.
1 refrigerator containing 3 copper yeast retorts.
5 copper kettles.
5 wooden tubs.
1 copper yeast retort.
2 fermenting tubs.
1 lot rubber-hose pipe.
1 large fermenting tub.
4 small fermenting tubs.
2 small fermenting tubs.
4 receiving cisterns, spirit pipes and branches.
358 barrels spirits high wines.
1 old sleigh.
1 lot empty tubs (3 old.
237 barrels spirits, high wines.
1 lot staves and hoops.
1 coal stove.
444 barrels high wines.
1 governor.
1 cast-iron band wheel.
1 lot machine gearing.
1 cast-iron band wheel, same.
3 blowers.
179 barrels high wines.
90 empty barrels.
49 empty barrels.
40 empty barrels.
1 lot coopers' tools.
1 steam-pump and gearing.
173 1 heavy wagon.
1 platform scale set in the ground.
3 desks.
1 lounge.
5 wooden-bottom chairs.
8 small pictures.
1 small clock.

Also the following-described lot or tract of land, with buildings thereon, situate in block No. 42, in said city of St. Louis, State of Missouri, being the distillery and distillery premises of Rudolph W. Ulrici, on the south side of Cedar street, in block No. 42 (lying), 74 feet 6 inches front by 118 feet deep, next to said alley, and being all of said real estate not hereinbefore released—the 74 feet 6 inches are owned by Rudolph W. Ulrici, as well as the improvements thereon and the adjoining buildings east thereof, which constitute what is known as the Ulrici distillery—be, and the same is hereby, declared to be forfeited to the United States, and that the same be, and is hereby, condemned to answer the prayer of the information filed herein.

And it is further ordered that said property be sold by the marshal of the United States for the eastern district of Missouri, at public auction,

first giving at least ten days' notice of the time, place, terms of sale (which shall be cash), and a description of the property to be sold, by advertisement in the St. Louis Republican, a daily newspaper published in
174 the city of St. Louis, and that a writ of venditioni exponas be issued directed to said marshal and made returnable on the first day of the next term of this court.

And the said David Dows, J. Dows Mairs, and Alexander E. Orr, having given a stipulation according to the rules and practice of this court, with sureties, it is ordered, adjudged, and decreed that the United States recover against the said David Dows, J. Dows Mairs, and Alexander E. Orr, claimants, the costs herein to be taxed, and in case of default or contumacy in the payment of said costs by said claimants execution shall be issued against said claimants and Chester H. Krum and Francis Ringling, as sureties in said stipulation.

175 And afterwards, to wit, on the 9th day of June, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, EX REL., &C., *vs.* 1,218 BARRELS OF SPIRITS ET ALIA. } 554.

Now comes the district attorney, and on motion and by consent of parties it is ordered that the decree entered herein on the 7th day of June be amended as follows: By inserting after the word "claimants," on the eleventh line from the bottom of page 300, the following words, to wit: "And all that portion of said real estate claimed by Richard W. Ulrici herein has been, and the same is hereby, declared to be released from any forfeiture because of anything in said information contained, the same being as follows: Commencing on Cedar street 74 feet and 6 inches east of a private alley; thence east to Main street; thence south to Mulberry street; thence westward to Second street; thence north 120 feet to Eberle, together with all improvements thereon, saving the buildings extending
176 along Cedar street to Main street, and back on Main street 80 feet, more or less, and not including any machinery or utensils." And also after the word "deep," on the second line from top of page 303, by inserting the following: "Next to said alley, and being all of said real estate not hereinbefore released."

177 And afterwards, to wit, on the 19th day of September, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

UNITED STATES, EX REL. LUCIAN HAWLEY, *vs.* 1,218 BARRELS SPIRITS ET ALIA. } 554.

This day comes H. W. Leffingwell, United States marshal, and files report of sale herein.

178 And afterwards, to wit, on the 20th day of September, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, EX REL. LUCIAN HAWLEY,
vs.
1,218 BARRELS OF SPIRITS ET ALIA. } 554.

Now comes the district attorney, on behalf of the United States, and also comes John W. Noble, esquire, on behalf of certain intervenors, and files affidavit in support of sale; and the marshal's report of sale, under a writ of venditioni exponas heretofore issued herein, being submitted to the court, and the district attorney interposing no opposition thereto, it is ordered that said sale be and the same is hereby, confirmed.

179 And afterwards, to wit, on the 16th day of October, A. D. 1876, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, EX REL.,
vs.
1,218 BARRELS OF SPIRITS ET ALIA. } 554.

Now comes Wm. H. Bliss, esquire, district attorney, on behalf of the United States, and on motion of said district attorney it is ordered that there be paid out of the funds in the registry of this court to the credit of said cause, to H. W. Leffingwell, United States marshal, for and on account of his fees and expenses, the sum of one thousand and twelve dollars and ninety-two cents, and for extra expenses in and about said cause, and by the court allowed, the further sum of eleven hundred and forty-five dollars and eighty-five cents.

180 And afterwards, to wit, on the 8th day of January, A. D. 1877, the following further proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, EX REL.,
vs.
1,218 BARRELS SPIRITS ET ALIA. } 554.

Now comes Wm. H. Bliss, esquire, district attorney, on behalf of the United States, and on whose motion it is ordered that the fund in the registry of this court to the credit of said cause be now distributed as follows:

To H. W. Leffingwell, United States marshal, for and on account of his fees and expenses, the sum of one thousand and twelve dollars and ninety-two cents, and for extra expenses in and about said cause, and by the court allowed, the further sum of eleven hundred and forty-five dollars and eighty-five cents.

To David P. Dyer, late district attorney, for attorney's commission, the sum of eighty dollars and fifty cents.

To M. M. Price, for and on account of clerk's fees, the sum of forty-

eight dollars and eighty-five cents, and also for and on account of
181 register's fees the further sum of fifty-one dollars and fifty-one cents.

To C. A. Newcomb, late United States marshal, for and on account of fees and expenses in and about said cause, and by the court allowed, the sum of eleven hundred and fifty-five dollars and thirty-five cents.

To Wm. H. Bliss, district attorney, for and on account of commissions as such attorney, the sum of nineteen dollars and fifty-two cents.

It is further ordered that the balance of said sum, to wit, the sum of fourteen hundred and eighty-six dollars and fifty cents, be paid over to the collector of internal revenue for the first collection district of Missouri.

182 And here the parties rested, and this was all the testimony offered and introduced in the case, and the cause was then submitted; and thereupon the court declared the law to be that on the pleadings and testimony the plaintiff was not entitled to recover; and to the action of the court in so declaring the law, and to said ruling of the court, the plaintiff then and there by its att'y excepted, and thereupon the court found for the defendants, and rendered judgment for the defendants, and to the action of the court in so finding and rendering judgment the plaintiff, by its attorney, then and there excepted; and that the testimony aforesaid, and the action of the court and the exceptions taken may appear of record, plaintiff prays that this its bill of exceptions may be signed and made a part of the record, which is accordingly done.

[SEAL.] GEO. W. McCRARY,
Circuit Judge.

APRIL 8, 1881.

183 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the pleadings and proceedings in case No. 1625 of the United States, plaintiff, against R. W. Ulrici et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 4th day of October, in the year of our Lord eighteen hundred and eighty-one.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

(Indorsement on cover:) No. 430. The United States, plaintiff in error, vs. Rudolph W. Ulrici, Gerhard Bensberg, and Charles Hoppe. E. Missouri C. C. U. S. Filed October 15, 1881.

111-98742

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 852.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JAMES M. SUTTON AND JAMES F. R. CLAPP.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

FILED MARCH 27, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

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THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JAMES M. SUTTON AND JAMES F. R. CLAPP.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

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1 In the circuit court of the United States, western district of North Carolina.

Be it remembered that the United States of America, by James E. Boyd, the United States attorney for the western district of North Carolina, on the 8th day of September, 1882, sued out of the aforesaid court a writ of summons in the following words and figures:

Circuit court, 4th circuit.

UNITED STATES OF AMERICA,
Western District of North Carolina:

Summons.

THE UNITED STATES OF AMERICA
against
THOMAS GREEN WHARTON, JAMES M. SUTTON, James F. R. Clapp.

The President of the United States of America to the marshal of the western district of North Carolina, greeting:

You are hereby commanded to summons Thomas Green Wharton, James M. Sutton, and James F. R. Clapp, citizens and residents of the western district of North Carolina, to appear before the judges of the
2 circuit court of the United States, at the next term of said court, to be held for the district aforesaid, at Greensboro', on the 1st Monday in October next, then and there to answer the complaint of the United States of America, the plaintiff herein, which complaint will be filed in said court within the first three days of said term. And let the said defendants take notice that if they fail to answer the said complaint within the time limited by law, the plaintiff will apply to the court for the relief demanded in the complaint.

Herein fail not and have you then and there this summons.

Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Greensboro', in said district, the 8th day of September, 1882, and in the 107th year of the Independence of the United States.

JNO. W. PAYNE.
Clerk United States Circuit Court,
Western District of North Carolina.

Which writ of summons was returned into court endorsed by the marshal executed, when the aforesaid attorney filed the following copy of distiller's warehouse bond:

3 (Copy.)

(Form 80—*Revised Nov.* 28, 1882.)

UNITED STATES INTERNAL REVENUE.

Distiller's warehousing bond.

[To be given in duplicate to the collector on the first day of each month, or within five days thereafter.]

Know all men by these presents that we, Thomas Green Wharton, of Guilford County, North Carolina, as principal, and James Monroe Sut-

ton and James Franklin Rudy Clapp, both of the County of Guilford, N. C., as sureties, are held and firmly bound unto the United States of America in the full and just sum of three hundred & fifty ($350) dollars, lawful money of the United States; to which payment, well and truly to be made, we bind ourselves, jointly and severally, our several heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 31st day of May, A. D. 1880.

The condition of the foregoing obligation is such, that if the above-bounden principal, or either of them, or the heirs, executors, or administrators of either of them, shall well and truly pay, or cause to be paid, unto the collector of internal revenue for the fifth collection district of N. C., the amount of taxes due and owing on the following-described distilled spirits, to wit:

Date.	No. barrels.	Wine gallons.	Proof gallons.	Taxable gallons.	Serial numbers of packages.
1889.					
May 10	1	21	21	21	59 to 65
"	1	21	21	21	"
13	1	22	22	22	"
15	1	22	22	22	"
21	1	22	22	22	"
28	1	39	39	39	"
31	1	22	22	22	"
Total	7	175	175	175	

which were deposited during the month ended 31st May, 1880, and entered for deposit in the distillery warehouse No. 108, of T. G. Wharton, at Brick Church, in the fifth collection district of North Carolina, on the 31st *May* day of May, A. D. 1880, before such spirits shall be removed from such warehouse, and within three years from the date of said entry, with interest as provided by joint resolution approved March 28, 1878, then this obligation shall be void; otherwise, to remain in full force and virtue.

THOMAS GREEN WHARTON. [SEAL.]
JAMES MONROE SUTTON. [SEAL.]
JAMES FRANKLIN RUDY CLAPP. [SEAL.]

Signed, sealed, and delivered in presences of—
A. C. Boon.
D. A. Sutton.

(Indorsed): Enrolled 371.

4 And also filed in open court the following complaint on October 2nd, 1882:

Complaint.

In the circuit court of the United States for the western district of North Carolina.

THE UNITED STATES OF AMERICA, PLAINTIFF, *against* THOMAS G. WHARTON, JAMES M. SUTTON, & James F. R. Clapp, defendants. } October term, 1882. At Greensboro'.

The plaintiff complains and alleges—

I. That at the times hereinafter mentioned the defendant, Thomas G.

Wharton, was a distiller of spirituous liquors from grain in the 5th collection district of North Carolina.

II. That said defendant, as principal, and the defendants, James M. Sutton & James F. R. Clapp, as sureties, covenanted under their hands and seals and made their writing obligatory to the plaintiff on the 31st day of May, 1880, in the penal sum of $350.00.

III. That the said bond was given and executed to secure the payment of the tax due the plaintiff under the internal-revenue laws of the
5 United States upon the distilled spirits aforesaid in the distillery warehouse No. 108 in said district, the bond dated the 31' day of May, 1880, being for spirits deposited in the month of May, 1880. Tax, $157.50.

IV. That the condition of said bond was that if said taxes were not paid before said spirits were removed from said warehouse and within three years from the date of the bond then the penalty of this obligation was to be forfeited.

V. That the following taxes for which said bond was liable and which have been assessed upon the spirits as aforesaid, are still due plaintiff and unpaid, namely, $157.50, the said spirits having been removed from the warehouse without the payment thereof.

Wherefore plaintiff demands judgment against the defendants for the sum of $350.00, the amount of the penalty of said bond to be discharged upon the payment of one hundred & fifty-seven dollars and fifty cents
6 with interest from May 31, 1880, and the cost of this action.

JAMES E. BOYD,
U. S. Attorney.

Whereupon the defendants, James M. Sutton and James F. R. Clapp, file the following answer, to wit:

Answer of James M. Sutton & James F. R. Clapp.

Circuit court of the United States, western district of North Carolina.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THOMAS G. WHARTON, JAMES M. SUTTON, JAMES F. R. CLAPP, defendants.

In the complaint of the plaintiffs the said James M. Sutton and James F. R. Clapp, for answer, allege—

I. That they admit the allegations in this first article or paragraph of the complaint.

II. Also admit the allegation in the second article as to the making of the bond, &c.

III. Also admit the allegations in this article.

IV. These defendants also admit the allegations as to the conditions of the bond.

7 V. That as to the allegations contained in the fifth article of the complaints, to wit, in substance, that the taxes for which said bond was liable and which have been assessed upon said spirits are still due and unpaid, the defendants do not deny that the said taxes have not been

paid by their principal, T. G. Wharton, but alledge and aver that these defendants are not liable to pay the same or any part thereof under the terms of the bond sued on, for the reason that the spirits made and deposited in the said warehouse by Mr. Wharton in the month of May, 1880, and for which alone their bond was made to secure, remained in the warehouse without disturbance, or removal, or loss, or leakage excepting ordinary leakage and loss by wasting. And that the spirits put in the warehouse in and for the month of May, 1880, so remained as required by law in the original packages until the 15th February, 1881, when it was taken possession of by the officers of internal revenue.

And these defendants therefore alledge that there was no breach of their bond.

VI. That the officers of the internal revenue took possession of all the spirits which was in the warehouse on the 15th February, 1881, and not only sold all the spirits put in the months of April and June, the packages of which had been removed in whole or in part, but also sold
8 all the packages put in the warehouse in the month of May, for which these defendants gave bond, all of which were intact, whole, and none of which had been removed, and no act committed as to them by their principal, the distiller, Wharton, to work any forfeiture.

VII. That the sales aforesaid were made by the revenue officers afterward, to wit, in May or June, 1881, of all the spirits found in the said warehouse, at public auction, and the aggregate sales amounted to about $225.00, an amount amply sufficient to cover and pay all the taxes due on all the spirits manufactured and charged to said T. G. Wharton, distiller, and unpaid, and also all the costs and expenses of the seizure and storage and sales, and that the .

IX. For a special defence to this action these defendants allege that the conditions of the bond sued on has not been broken; the tax not being due before the spirits were removed from the warehouse, and within three years from date of the bond, 31st of May, 1880.

That no package of the spirits put in in the month of May was removed or disposed of.

The defendants, James M. Sutton and James F. R. Clapp, having fully answered, demand judgment that they go without day and for costs.
9

SCOTT & CALDWELL
& THOS. B. KEOGH,
Attorneys.

James M. Sutton and Jas. F. R. Clapp, the defendants, being duly sworn, state that the facts set forth in the foregoing answer as of their own knowledge are true, and those facts stated as on information they believe to be true.

JAMES M. SUTTON.
JAMES F. R. CLAPP.

Sworn & subscribed to before me this 9th October, 1882.
JNO. W. PAYNE, *Clerk.*

Since the commencement of this action Thos. G. Wharton, the distiller and principal in the bond, has died inso'vant, and the case is abated as to him.

Afterwards at said term of said court the following jury was sworn and charged in the cause, to wit: W. W. Mitchell, L. S. Crutchfield, Matthew King, J. W. Gilmer, H. Garvis, N. H. Bodenheimer, R. A. Gilmer, W. M. Wyrick, W. M. Sloon, H. Untank, H. Rust, J. N. Merritt, who return into open court the following special verdict, to wit:

10 That Thomas G. Wharton was a distiller of spirituous liquors from grain in the 5th collection district of North Carolina.

That in the month of May, 1880, he manufactured and stored in his distillery warehouse No. 106, one hundred and seventy-five gallons of distilled spirits, contained in seven packages, Nos. 59 to 65, inclusive, and on the 31st day of May, 1880, he gave the bond now sued on in the sum of $350.00, with the two defendants, James M. Sutton and James F. R. Clapp, as his sureties.

That Wharton continued to operate his distillery until the 10th of June, 1880, when he suspended.

His product for June to the time of suspension was deposited in the warehouse, and there was also in his warehouse spirits manufactured and deposited for months previous to May, 1880.

Wharton failed to give warehousing bond for the spirits deposited in June, 1880.

The warehouse and its contents were examined in the month of February, 1881, and it was found that three packages therein were entirely empty, and considerable wantage in others.

The empty packages were not tax-paid, and we find that Wharton removed the contents of at least one of the packages from the warehouse himself without the payment of the tax thereon.

11 The spirits deposited in the month of May, 1880, and for which the bond sued on was given, were found in the warehouse in proper condition when the same was seized, none of this month's product having been removed by Wharton.

About the first of March, 1881, the distillery, warehouse, and all of its contents, including the product of May, 1880, were seized by the collector of the 5th N. C. district as forfeited to the United States for the violations of law committed by Wharton, in failing to give warehousing bond for June, 1880, and in removing from his warehouse spirits therein contained upon which the tax had not been paid, and upon which there was no stamp to denote the payment of the tax.

The whole of the spirits found in the warehouse were subsequently sold subject to tax as provided by sec. 3334, R. S., by the collector, and the proceeds were taken as forfeited to the United States.

That the tax on the spirits for May, 1880, amounts to $157.50, and is unpaid, and that the spirits sold by the collector brought the sum of fifty cents per gallon, and the purchaser paid to the United States ninety cents per gallon for tax thereon in addition to the price, and the spirits were duly stamped with tax-paid stamps, and delivered to the purchaser.

12 Now if the court be of opinion upon this state of facts, that the plaintiff is entitled to recover then we find for the plaintiff, otherwise we find for the defendants.

Upon the said verdict and finding the court was of opinion that there was no breach of the bond sued on, and so held that plaintiff was not entitled to recover.

To which ruling plaintiff excepts. Motion for new trial by plaintiff. Motion overruled.

Judgment for defendants. Notice of appeal by plaintiff given and accepted.

The United States of America to James M. Sutton and James F. R. Clapp, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in the city of Washington, D. C., on the second Monday in October (1883) next pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of North Carolina, wherein the United States of America is plaintiff and you are defendants in error, to show cause, if any you have, why the judgment in the said writ of error mentioned should not
13 be cancelled, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal. Done at Greensboro', in the western district of North Carolina, this the 27th day of February, 1883.

ROBERT P. DICK, [SEAL.]
Judge of the District Court, and one of the Judges of the Circuit Court for the Western District of North Carolina.

Citation.

Service accepted and time waived.

SCOTT & CALDWELL,
Attorneys for Def'ts.

Whereupon the following writ of error was filed:

THE UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the United States for the western district of North Carolina, greeting:

Because the records and proceedings, and also in rendition of the judgment of a plea which is in the said circuit court before you, between the United States of America and James M. Sutton and James F. R. Clapp, a manifest error hath happened to the great damage of the said United States as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the
14 parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 2d Monday of October (1883) next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, the 27th day of February, in the year of our Lord eighteen hundred and eighty-three.

JNO. W. PAYNE,
Clerk of the Circuit Court for the Western District of North Carolina.

Approved by—

ROBERT P. DICK,
U. S. Dist. Judge, Judge of the District Court of the United States for the Western District of North Carolina, and one of the Judges of the Circuit Court for the said District.

15 *Writ of error.*

Service of writ accepted and time waived.
March 3rd, 1883.

SCOTT & CALDWELL,
Att'ys for Def'ts.

I, Jno. W. Payne, clerk of the circuit court of United States for the western district of North Carolina, at Greensboro', certify that the foregoing is a true and correct copy of the records of a case lately pending in this court, wherein the United States were plaintiffs and James M. Sutton and James F. R. Clapp were defendants.

Witness my hand and seal at office in Greensboro', this 9th day of March, 1883.

[SEAL.] JNO. W. PAYNE, *Clerk.*

(Indorsement on cover:) No. 852. The United States, plaintiff in error, *vs.* James M. Sutton and James F. R. Clapp. W. N. Carolina, C. C. U. S. Filed 27th March, 1883.

111-30742

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES *vs.* ULRICI, &c. } No. 430.

THE UNITED STATES *vs.* SUTTON, &c. } No. 852.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES
vs.
ULRICI, &c. } No. 430.

THE UNITED STATES
vs.
SUTTON, &c. } No. 852.

BRIEF FOR THE UNITED STATES.

These are suits brought upon bonds given to secure taxes upon spirits deposited in warehouses.

The defense is that the spirits in question were *condemned* subsequently to the giving of such bonds, and having been sold, the United States received therefrom an amount of money which more than covered the tax debt.

The question intended to be raised is, whether the net proceeds of sales of untax-paid spirits *for forfeiture*, under

section 3334 of the Revised Statutes, are to be applied in extinguishing such tax debt.

That section, so far as immediately applicable, is as follows:

> "All distilled spirits forfeited to the United States, sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon."

The view taken by the Government is, that such forfeiture does not affect any existing debt theretofore incurred by the owner in respect to the thing forfeited; and that the requirement that the thing shall be sold "subject to tax" is a provision to prevent the mischief of throwing upon the market spirits that can subsequently be offered at prices which would prevent the sale of such spirits as had honestly paid tax; a policy which theretofore had been enforced by a direction to *destroy* all such spirits as after an effort so to do continued for ninety days, could not be sold for a price equal to the tax. Act of 1867, below.

This view is confirmed by the circumstance that sales under section 3334 may well be of forfeited *tax-paid* spirits. In that case there can be no doubt that the owner loses the tax so paid, for the *consideration* for such payment is not at all affected by the subsequent forfeiture of the thing in respect of which it was paid. The amount of money paid for taxes upon the one hand, and that amount equal thereto subsequently received under the sale for forfeiture, upon the other hand, belong to the

Government under different titles; so that no *quasi assumpsit*, because of a failure of consideration, can be implied against the United States to repay through the medium of the Court of Claims or otherwise such tax money *as if twice paid*. This principle seems equally to apply to the collateral *debt* which every tax-payer owes so long as the tax shall be unpaid, and so equally to any *security therefor* which may have been given by third persons.

The proceedings under *forfeiture*, therefore, as is submitted, cannot be made avail of to avoid the effect of any *breach* of the tax-bond.

A short statement of the facts in the above cases is as follows:

1.—Ulrici, &c.

The petition, filed February, 1880, sets out a bond dated May 5, 1875, in the sum of $47,000, conditioned to pay the taxes upon certain specified packages of spirits "entered for deposit in the distillery warehouse No. [&c.], *before such spirits shall be removed from such warehouse, and within one year from the date hereof.*" It then alleged that such taxes amounted to $23,600.70, and that they were not paid *before their removal, and within one year, &c.*

Ulrici, the owner, and the sureties upon the bond answered severally:

a. Denying that the spirits or any part thereof were

ever removed from said warehouse, &c., *with the taxes unpaid thereon*, or that plaintiff has been damaged as stated.

b. Alleging that the spirits were already forfeited and had become the property of the United States *before the bond was given*, and that after their deposit in the warehouse, and within the year mentioned in the bond, the United States seized the spirits as forfeited, and afterwards sold them, receiving in payment therefor the amount of taxes alleged to exist thereon, &c.

[The answer of the sureties differs from the above by alleging that the forfeiture previously to the execution of the bond was occasioned by the *fraud* of Ulrici, committed without their knowledge or consent.]

The United States filed demurrers to the answers, and upon these being overruled, replied specially, denying the second defense in the pleas of the defendants.

Trial by jury having been waived, &c. (folio 37), the court held that upon the pleadings and evidence the plaintiffs could not recover; and the plaintiffs having excepted thereto the court found for the defendants and rendered judgment accordingly.

A bill of exceptions gives at length the evidence introduced upon both sides: *That for the plaintiffs* consisted of the bond, together with testimony to show that the spirits in question were the same as were subsequently forfeited and sold under an order of court, &c., the purchasers having paid therefor amounts sufficient to purchase tax-paid stamps, &c. *That for the defendants* consisted of the record of the proceedings for forfeiture, &c., begun June 4, 1875, (the sale being made in January, 1876, folio 139);

with a *return* of tax paid out of the proceeds, $58,172.40, in March, 1876 (folio 140); and a final decree entered in January, 1877 (folio 180).

2.—Sutton, &c.

After a complaint upon a bond dated May 31, 1880, and conditioned as in Ulrici's case [penalty $350], which alleged the non-payment of the taxes secured thereby, an answer was filed by the sureties (the principal being dead) alleging that in February, 1881, the spirits in question were seized by the United States as forfeited, and having been sold the sum of $225 was received by the United States therefor, and that this was *a satisfaction* of the tax so claimed.

Upon the trial the jury returned a special verdict (p. 5) setting forth that on the 31st of May, 1880, one Wharton, a distiller and the other defendants as his sureties, gave the bond sued upon, to secure taxes ($157.50) upon spirits during that month deposited in the warehouse; also that afterwards Wharton committed certain acts which, as was claimed by the United States, caused a forfeiture of the spirits in question; and these were accordingly seized condemned and sold, the purchaser paying therefor 50 cents per gallon, and also 90 cents per gallon for tax.

The court thereupon gave judgment against the plaintiffs.

In each of the above cases it is assigned for error that judgment was given for the defendants whereas it should have been given for the plaintiffs.

The cases will be argued together.

The statutes to which reference will be made, are as follows:

[Rev. Stats.]

SEC. 3334. All distilled spirits forfeited to the United States, sold by order of court, or under process of distraint, shall be sold subject to tax; and the purchaser shall immediately, and before he takes possession of said spirits, pay the tax thereon. And any distilled spirits heretofore condemned, and now in the possession of the United States, shall be sold as herein provided. If any tax-paid stamps are affixed to any cask or package so condemned, such stamps shall be obliterated and destroyed by the collector or marshal after forfeiture and before such sale.

SEC. 3293. The distiller or owner of all spirits removed as aforesaid to the distillery warehouse shall, on the first day of each month, or within five days thereafter, enter the same for deposit in such warehouse, under such regulations as the Commissioner of Internal Revenue may prescribe. Said entry shall be in triplicate, and shall contain the name of the person making the entry, the designation of the warehouse in which the deposit is made, and the date thereof, and shall be in the following form:

ENTRY FOR DEPOSIT IN DISTILLERY WAREHOUSE.

Entry of distilled spirits deposited by ——— ———, *in distillery warehouse* ———, *in the* ——— *district, State of* ———, *on the* —— *day of* ———, *anno Domini* ——.

And the entry shall specify the kind of spirits, the whole number of casks, the marks and serial num-

bers thereon, the number of gauge or wine gallons and proof-gallons, and the amount of the tax on the spirits contained in them; all of which shall be verified by the oath of the distiller or owner of the same attached to the entry. The said distiller or owner shall give his bond in duplicate, with one or more sureties, satisfactory to the collector of the district, conditioned that the principal named in said bond shall pay the tax on the spirits as specified in the entry, or cause the same to be paid, before removal from said distillery warehouse, and within one year from the date of said bond; and the penal sum of such bond shall not be less than double the amount of the tax on such distilled spirits. One of said entries shall be retained in the office of the collector of the district, one sent to the store-keeper in charge of the warehouse, to be retained and filed in the warehouse, and one sent with duplicate of the bond to the Commissioner of Internal Revenue, to be filed in his office.

SEC. 3253. The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time when knowledge of such fact is obtained by the Commissioner of Internal Revenue, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

SEC. 3257. Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he

shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw material for the production of distilled spirits found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years.

SEC. 3271. Every distiller shall provide, at his own expense, a warehouse, to be situated on and to constitute a part of his distillery premises, and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid, but no dwelling house shall be used for such purpose, and no door, window, or other opening shall be made or permitted in the walls of such warehouse leading into the distillery or into any other room or building, and such warehouse, when approved by the Commissioner of Internal Revenue, on report of the collector, is hereby declared to be a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district, and in charge of an internal-revenue store-keeper assigned thereto by the Commissioner.

SEC. 3274. Every distillery warehouse shall be in the joint custody of the store-keeper and the proprietor thereof. It shall be kept securely locked, and shall at no time be unlocked or opened or remain open, unless in the presence of such store-keeper, or other person who may be designated to act for him, as provided by law, and no articles shall be received in or delivered from such warehouse, except on an order or permit addressed to the store-keeper and signed by the collector having control of the warehouse.

SEC. 3281. Every person who carries on the business of a distiller without having given bond as required by law, or who engages in or carries on the business of a distiller with intent to defraud the

United States of the tax on the spirits distilled by him, or of any part thereof, shall, for every such offense, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years. And all distilled spirits or wines, and all stills or other apparatus fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises, and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person, who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

SEC. 3288. No distilled spirits on which the tax has been paid shall be stored or allowed to remain on any distillery premises, under the penalty of a forfeiture of all spirits so found.

SEC. 3289. All distilled spirits found in any cask or package containing five gallons or more, without having thereon each mark and stamp required therefor by law, shall be forfeited to the United States.

[Act of 1867, c. 169, sec. 27, 14 Stat., 484.]

That no distilled spirits which may have been forfeited to the Government in accordance with law shall be sold for a price less than the amount of the tax required thereon by law at the time of such sale. And if the officer having such spirits in charge shall have been unable, for a period of ninety days, to (sell) the same for a price equal to the tax, such spirits shall be destroyed, under such rules and regu-tions as the Commissioner of Internal Revenue may prescribe.

It is apparent upon inspection of sections 3257, 3281, 3288 and 3289 as well as 3334 (above) that *tax-paid* spirits must often be liable to forfeiture for misconduct of their owners.

Sales of all sorts of spirits forfeited under the internal-revenue laws (whether *tax-paid* or not) are provided for by section 3334 only.

Therefore the provision in the latter section "subject to tax," &c., is not intended to operate as a satisfaction of a claim for tax upon forfeited spirits, *as such*, but is based upon some other reason. The tax upon spirits is so considerable as to constitute the larger element of its price in market. It was probably therefore thought due to the interests of this revenue in general to give to other spirits in market or to be manufactured, the benefit of subjecting forfeited spirits to a burden as regards the buyer equal to that of the tax, so that upon a resale by him he would be much upon the same footing as other dealers.

In the nature of things *prima facie* forfeiture which is a punishment for an offense criminal or *quasi* criminal, can have of itself no extraordinary effect in the way, for instance, of relieving the criminal from civil obligations incurred by him in respect to anterior considerations, whether to other citizens or to the State.

At the time when the bond was given the tax debt had been fully created, *solvendum in futuro*. As there is not *expressly*, so it may be suggested, there *ought not to be*, a condition in the bond to the effect that if the principal should be guilty of any criminal offense involving forfeiture the bond should be void. There is no connection in point of public policy between the tax obligation and the penalty for the crime. If the owner of the spirits chose to pour it out upon the ground, or to destroy it in any way, the tax obligation would remain. So, also, as is submitted, the tax obligation remains where he chooses *indirectly* to destroy his interest therein, *ex-gr.*, by incurring a forfeiture. And at the same time the sovereign to whom the forfeiture goes is under no *a priori* duty to lessen the amount thereof upon the ground that what is lost as forfeiture will be received as tax.

It seems that there can be no reason why the party involved in fault should be made to suffer a larger loss in regard to his *tax-paid* spirits than in regard to such as are *untax-paid*. The theory upon the other side appears to be that so far as the owner *has paid* 90 cents per gallon tax upon spirits involved in any mass forfeited—*that is lost*, whilst so much of said tax as has not been paid *is saved*. It seems that no reason can be assigned for this variation. In both cases the owner has received from the

public the same protection, that is, the same *consideration* for his reciprocal contract. As to both his *fault* is the same. In both cases, therefore, his *collateral* relations to the Government should remain undisturbed. In other words, his tax *payments* should be regarded as remaining *payments upon valuable and unfailed consideration*, and his tax *debts* as remaining *debts* upon like consideration.

It is also submitted that there is nothing in section 3334 that, being duly considered, contradicts this theory.

As has already been said, that section provides for the only sales under proceedings *in rem* against forfeited spirits, as well such as are seized in warehouses, (which therefore are generally untax-paid; section 3288, above), as such as are condemned in any other connection, which are often tax-paid. It also provides for the sale of spirits seized for non-payment of taxes, "under process of distraint." (Section 3253, above.) In this latter case the proceeds of sale necessarily discharge the tax debt, so far as they extend. The *process* &c. was to that end.

The words "pay the tax" in section 3334, therefore are strictly applicable only to the case of sales under *distraint*. They apply in a different sense to sales for *forfeiture*. *There* the subject-matter shows that the payment is really one of a sum only *like and equal to* the tax, exacted, so to say, not from the tax debtor, but from a purchaser of the spirits.

It therefore leaves the tax itself unsettled.

Although upon its face there might upon cursory reading be a doubt as to what the statute means in this latter respect, yet the circumstances of the case involved constitute a key which explains that as to one class of sales a

real "tax" is meant, and as to the other—only something like a tax; *i. e.*, like in amount and payable to the same officer. Considering the otherwise well-defined relations to the Government held by *the forfeited spirits* as well as by its *owner* and its *purchaser*, the language of section 3234 now under consideration is, at all events, not sufficient to work a *satisfaction* of the *tax debt*, nor consequently of any *security* given therefor.

S. F. PHILLIPS,
Solicitor-General.

6.104
111-43

To the Supreme Court of the United States,

in its Original Jurisdiction.

The Commonwealth of Virginia, by its special agent, John J. Moran, appointed and commissioned by the Governor thereof in pursuance of its act of assembly hereinafter mentioned, begs leave to file this, its petition praying for a writ of *mandamus* against Charles J. Folger, the Secretary of the Treasury of the United States, and respectfully shows unto said Court.

That the legislature of said Commonwealth, by its act, approved the 3rd day of March, A. D. 1880, authorized the Governor thereof "to appoint a special agent to collect, determine and settle all claims or debts due the State of Virginia by the United States, excepting the war now claims in the hands of commissioners appointed by the legislature;" and that in and by the said act of said State, approved as aforesaid, it was made the duty of the Governor of said State, upon the approval of said act of said legislature, "to forward a certified copy thereof to the Secretary of the Treasury of the United States of America."

That in pursuance of said act of said State, the then Governor thereof, F. W. M. Holliday, on the 28th day of April, A. D. 1880, duly appointed and commissioned the aforesaid John J. Moran, the special agent of said State, to prosecute claims against the United States or any officer thereof, on behalf of the said State of Virginia, your re-

lator aforesaid, including claims of the character hereinafter described; and that in pursuance of the duty imposed upon him by said act of said State, the then Governor thereof aforesaid duly forwarded to the Secretary of the Treasury of the United States of America, a duly certified copy of said act of said State and also in addition thereto, he, the said Governor, duly forwarded to the said Secretary a duly certified copy of the appointment and commission of the said Moran, to act as the special agent of your relator in the premises, made as aforesaid in pursuance of said act of said State.

That by an act, entitled "an act to regulate the deposits of the public money," approved on the 23rd day of June, A. D. 1836, the Congress of the United States, enacted by the thirteenth and fourteenth sections thereof, (5th Statutes at Large, p. 55) as follows:

> "SEC. 13. *And be it further enacted*, That the money which shall be in the Treasury of the United States on the first day of January, eighteen hundred and thirty-seven, reserving the sum of five millions of dollars, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall, by law, authorize their treasurers, or other competent authorities, to receive the same on the terms hereinafter specified; and the Secretary of the Treasury shall deliver the same to such treasurers or other competent authorities, on receiving certificates of deposite therefor, signed by such competent authorities, in such form as may be prescribed by the Secretary aforesaid; which certificates shall express the usual and legal obligations, and pledge the faith of the State for the safe-keeping and repayment thereof, and shall pledge the faith of the States receiving the same to pay the said moneys, and every part thereof, from time to time, whenever the same shall be required by the Secretary of the Treasury, for the purpose of defraying any wants of the

public Treasury, beyond the amount of the five millions aforesaid: *Provided*, That if any State declines to receive its proportion of the surplus aforesaid, on the terms before named, the same shall be deposited with the other States, agreeing to accept the same on deposit, in the proportion aforesaid: *And provided further*, That when said money, or any part thereof, shall be wanted by the said Secretary to meet appropriations by law, the same shall be called for, in ratable proportions, within one year, as nearly as conveniently may be, from the different States with which the same is deposited, and shall not be called for in sums exceeding ten thousand dollars from any one State in any one month, without previous notice of thirty days for every additional sum of twenty thousand dollars which may at any time be required.

"SEC. 14. *And be it further enacted*, That the said deposits shall be made with said States in the following proportions, and at the following times, to-wit: one quarter part on the first day of January, eighteen hundred and thirty-seven, or as soon thereafter as may be; one quarter part on the first day of April, one quarter part on the first day of July, and one quarter part on the first day of October—all in the same year."

That each of the then existing twenty-six States of the United States, between the said 23d day of June, 1836, and May 3d, 1837, by their several and respective legislatures and other proper and constituted authorities thereof, passed or enacted laws accepting the provisions and the terms and conditions of the said thirteenth and fourteenth sections of said Act of Congress of June 23, 1836; which said existing States, and the dates of their said respective laws or acts of said acceptance, are as follows:

Maine,	January 26, 1837,
New Hampshire,	January 11, 1837,
Massachusetts,	January 19, 1837,
Vermont,	November 17, 1836,
Connecticut,	December 29, 1836,
Rhode Island,	November 10, 1836,
New York,	January 10, 1837,
New Jersey,	November 4, 1836,
Pennsylvania,	December 22, 1836,
Delaware,	January 16, 1837,
Maryland,	December 30, 1836,
Virginia,	December 20, 1836,
North Carolina,	January 11, 1837,
South Carolina,	December 21, 1836,
Georgia,	December 26, 1836,
Alabama,	December 16, 1836,
Louisiana,	February 7, 1837, March 13, 1837,
Mississippi,	May 2, 1837,
Tennessee,	October 29, 1836,
Kentucky,	December 16, 1836,
Ohio,	December 19, 1836,
Missouri,	December 29, 1836,
Indiana,	December 21, 1836,
Illinois,	December 17, 1836,
Michigan,	July 22, 1836,
Arkansas,	October 29, 1836,

That each of the said existing twenty-six States, by their proper constituted authorities, duly certified and forwarded to the then Secretary of the Treasury of the United States, Levi Woodbury, copies of said laws or acts of acceptance aforesaid, as appears by his official report thereof, bearing date December 9, 1839, transmitted by him to the Senate of the United States, and numbered fourteen (14) of the Senate files of the first session of the 26th Congress of the United States, to which reference is hereby made for a more full and complete exhibit of the said several laws or acts of acceptance aforesaid of all of said States.

The act of assembly of your relator, accepting the provisions and the terms and conditions of the thirteenth and fourteenth sections of said Act of Congress of June 23, 1836, is as follows:

> "An Act declaring the willingness of the State of Virginia to accept the deposit of its proportion of the moneys that by the thirteenth section of the act of Congress entitled 'An Act to regulate the deposits of the public money,' approved the twenty-third of June, one thousand eight hundred and thirty-six, are to be deposited with the several States, and authorizing the treasurer of the Commonwealth to receive the same. (Passed December 20, 1836.)
>
> "Whereas, by the thirteenth section of the act of Congress of the United States, entitled 'An Act to regulate the deposits of the public moneys,' approved the twenty-third of June, one thousand eight hundred and thirty-six, it is enacted 'that the money which shall be in the Treasury of the United States on the first day of January, one thousand eight hundred and thirty-seven, reserving the sum of five millions of dollars, shall be deposited with the several States,' under the provisions and on the terms therein contained; and while the General Assembly regards any system of taxation by the Federal Government producing more revenue than is necessary for the wants of the Government economically administered, as impolitic and unjust; and denies the right of the Congress of the United States to raise revenue for the purpose of deposit or distribution among the States; nevertheless, believing the surplus money in the Treasury to have arisen under extraordinary circumstances, not likely to continue, and considering the provisions of the said act to be a temporary expedient to relieve a redundant Treasury, and being willing, in good faith, under such circumstances, to receive the proportion of said surplus proposed to be deposited with the State of Virginia: Therefore,
>
> "*Be it enacted by the General Assembly of Virginia*, That the Treasurer of the Commonwealth, for the time being, be, and he is hereby, appointed and au-

thorized to receive, on the terms recited in the thirteenth section of the act of Congress, entitled 'An Act to regulate the deposits of the public money,' approved the twenty-third of June, one thousand eight hundred and thirty-six, the proportion of moneys thereby directed to be deposited with the several States, that according to the provisions of that section may, can, or ought to be deposited with this State. And the said treasurer is hereby fully empowered and authorized, as any sum or sums may from time to time be delivered to him by the Secretary of the Treasury of the United States, for or on account of said proportion, liable as aforesaid to be deposited with this State, to sign and deliver, to the said Secretary of the Treasury, such certificate or certificates of deposit therefor as are prescribed by, or may be required under and by virtue of the provisions of the said recited section, and to do and perform upon the faith and responsibility of this State, any act necessary to entitle him, as the authorized functionary of the State, to have deposited with the State that proportion of the surplus aforesaid, that by the provisions of the said section may, can, or ought to be deposited with this State.

"*And be it further enacted*, That all moneys deposited with or received by the treasurer, under the authority hereby given, shall be paid into the public treasury of this State, and deposited as public moneys belonging to the commonwealth, are by law directed to be paid and deposited; and the treasurer shall, and he is hereby declared to be officially liable, and his sureties responsible therefor, in like manner as for other moneys paid into the public treasury.

"This act shall be in force from the passing thereof."

That in pursuance of the thirteenth section of said Act of Congress of June 23, 1836, the then said Secretary of the Treasury of the United States, at or about the 19th day of December, A. D. 1836, prescribed the form of the certificates of deposit to be signed by the treasurers, or other competent authorities of said several States, as con-

templated or required by said section of said Act of Congress, and which said form of said certificates of deposit so prescribed as aforesaid, and afterwards acted upon by said Secretary of the Treasury of the United States, and the said several State authorities in partially carrying out the provisions of said Act of Congress, is as follows:

"Whereas, by the thirteenth section of an act of Congress of the United States, entitled, 'An act to regulate the deposits of the public money,' approved the 23d of June, 1836, it was enacted 'that the money which shall be in treasury of the United States on the first day of January, 1837, reserving the sum of five millions of dollars, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall by law authorize their treasurer, or other competent authorities, to receive the same, on the terms hereafter specified; and the Secretary of the Treasury shall deliver the same to such treasurer or other competent authorities, on receiving certificates of deposit therefor, signed by such competent authorities in such form as may be prescribed by the Secretary aforesaid.

"And whereas, the State of has, by an act of its legislature, passed on the day of , one thousand eight hundred and thirty , authorized and directed the of the said State to receive its proportional share of the said surplus moneys of the United States, on deposit with the said State upon the terms specified in the said act of Congres;

"And whereas the Secretary of the Treasury, in pursuance of the provisions of the said act of Congress, and in conformity with the provisions of the said act of the legislature of the State of , has delivered to the thereof the sum of dollars and cents, the same being part of the installment or one-fourth part of the ratable proportion of the said State in the surplus money in the treasury on the first of January, 1837;

"Now, therefore, be it known that I, , do hereby certify that the said sum of dollars and cents has been deposited by the Secretary of the Treasury with the State of , and that for the safe-keeping and repayment of the same to the United States, in conformity to said act of Congress, the State of is legally bound, and its faith is solemnly pledged; and in pursuance of the authority of the act of the legislature aforesaid, for and in behalf of the said State, I hereby affix my signature and seal, in testimony of the premises, and of the faith of the said State to pay the said money so deposited, and every part thereof, from time to time, whenever the same shall be required by the Secretary of the Treasury, for the purposes and in the manner and proportions set forth and described in the said recited 13th section of the act of Congress aforesaid, and by a requisition or notice similar in form to that hereto annexed, addressed to the care of the governor of said State.

"Signed and sealed, this day of , one thousand eight hundred and thirty .

"Attest:"

And the form of a requisition or notice to each State aforesaid for repayment, annexed to said form of the certificate of deposit, prepared by the then said Secretary of the Treasury of the United States, is as follows:

"TREASURY DEPARTMENT, 183 .

"*To the State of*

"Under the provisions of an act of Congress entitled 'An act to regulate the deposites of the public money,' passed June 23rd, 1836, and an act of said State passed certain sums of money belonging to the United States having been deposited with the State aforesaid for safe keeping and repayment, in conformity with the provisions of said act, said State is hereby notified that a portion of said money, viz: the sum of $ is required to be repaid to the United States, by the State aforesaid,

for the purposes named in said act, and in conformity with its provisions.

"*Secretary of the Treasury.*

"*Care of his Excellency.*

"*Governor of said State.*

["The repayment of the said sum to the Treasurer of the United States will be, in one of the following modes, which this Department may, in any particular case, prefer and direct, viz: 1. By a request annexed to the above requisition to place the same to the credit of said Treasurer in the Bank of at on or before the day of next, and to take duplicate receipts therefor—one of which receipts sent to the said Treasurer will be a sufficient voucher for the amount of said repayment on the part of said State.

"2. Or, by a request written by said Secretary on the back of a common Treasury warrant directed to the State for payment by said Treasurer, that said State would pay the same, and which warrant with a receipt of payment thereon will be a sufficient voucher as aforesaid:]

in evidence of the prescribing of said forms by the then said Secretary of the Treasury of the United States, reference is hereby made to his official report thereof, bearing date September 25th, 1837, to the House of Representatives of the United States and numbered document thirty (30) of the 25th Congress, the first session thereof.

That on or about the first day of January, A. D. 1837, the then said Secretary of the Treasury of the United States, duly ascertained the amount of money which was in the Treasury aforesaid on the first day of January, A. D. 1837, which amount or sum so ascertained, was found by him to be after reserving the sum of five millions of dollars, $37,468,859.88, and which said last mentioned sum, thus ascertained, was the sum or amount set apart and appropriated by the said thirteenth section of said Act of Congress of June 23, 1836, to be deposited by the Secre-

tary of the Treasury of the United States, with said several existing States, accepting its terms, in four proportions or installments, as prescribed by the fourteenth section of said Act of Congress of June 23, 1836, in proportion to the respective representation in the Senate and House of Representatives of the United States, of each of said States accepting its terms.

That the then said Secretary of the Treasury of the United States, on or about the first day of January, A.D. 1837, duly ascertained the respective representation in the Senate and House of Representatives, which each of the said existing States, accepting as aforesaid the provisions of said Act of Congress of June 23, 1836, had, and after so ascertaining their said respective representation, he calculated, ascertained, declared and apportioned the total amount to be deposited with each of said States, accepting the provisions aforesaid of said Act of Congress of June 23, 1836, from said sum or amount of $37,468,-859.88, in the Treasury as aforesaid, in proportion to its respective representation, so ascertained as aforesaid, as follows:

Maine	$1,274,451 00
New Hampshire	892,115 72
Massachusetts	1,784,231 44
Vermont	892,115 72
Connecticut	1,019,560 80
Rhode Island	509,780 40
New York	5,352,694 28
New Jersey	1,019,560 80
Pennsylvania	3,823,353 04
Delaware	382,335 32
Maryland	1,274,451 00
Virginia	2,931,237 32
North Carolina	1,911,676 52
South Carolina	1,401,896 12
Georgia	1,401,896 12
Alabama	892,115 72
Louisiana	637,225 52
Mississippi	509,780 40
Tennessee	1,911,676 52
Kentucky	1,911,676 52
Ohio	2,676,347 12
Missouri	509,780 40
Indiana	1,147,005 92
Illinois	637,225 52
Michigan	382,335 32
Arkansas	382,335 32
Total amount apportioned	$37,468,859 88

That from the said respective sums so apportioned, as aforesaid, to each of said named twenty-six States out of said $37,468,859.88 in the Treasury aforesaid, he, the then said Secretary of the said Treasury, again calculated, ascertained and declared that the four quarterly proportions or instalments thereout, payable at the periods mentioned

and required by the fourteenth section of said act of June 23, 1836, were as follows:

Maine	$318,612 75
New Hampshire	223,028 93
Massachusetts	446,057 86
Vermont	223,028 93
Connecticut	254,890 20
Rhode Island	127,445 10
New York	1,338,173 57
New Jersey	254,890 20
Pennsylvania	955,838 26
Delaware	95,583 83
Maryland	318,612 75
Virginia	732,809 33
North Carolina	477,919 13
South Carolina	350,474 03
Georgia	350,474 03
Alabama	223,028 93
Louisiana	159,306 38
Mississippi	127,445 10
Tennessee	477,919 13
Kentucky	477,919 13
Ohio	669,086 78
Missouri	127,445 10
Indiana	286,751 48
Illinois	159,306 38
Michigan	95,583 83
Arkansas	95,583 83
	$9,367,214 97

That at the time required by said fourteenth section of said act of Congress of June 23, 1836, the then said Secretary of said Treasury, through William Selden, the

then Treasurer of the United States, made the deposits of the first three proportions or instalments with the said several States, receiving their respective certificates of deposit therefor, in the form hereinbefore described, as follows:

Names of States.	Amounts transferred between January 1, and February 1, 1837.	Amounts transferred, payable April 1, 1837.	Amounts transferred, payable July 1, 1837.	Total each State.
Maine	$318,612 75	$318,612 75	$318,612 75	$955,838 25
New Hampshire	228,028 93	223,028 93	223,028 93	669,086 79
Massachusetts	446,057 86	446,057 86	446,057 86	1,338,173 58
Vermont	223,028 93	223,028 96	223,028 93	669,086 79
Connecticut	254,890 20	254,890 23	254,890 20	764,670 60
Rhode Island	127,445 10	127,445 10	127,445 10	382,335 30
New York	1,338,173 57	1,338,173 57	1,338,173 57	4,014,520 71
New Jersey	254,890 20	254,890 27	254,890 20	764,670 60
Pennsylvania	955,838 26	955,838 29	955,838 26	2,867,514 78
Delaware	95,583 83	95,583 86	95,583 83	286,751 49
Maryland	318,612 75	318,612 73	318,612 75	955,838 25
Virginia	732,809 33	732,809 35	732,809 33	2,198,427 99
North Carolina	477,919 13	477,919 13	477,919 13	1,433,757 39
South Carolina	350,474 03	350,474 03	350,474 03	1,051,422 09
Georgia	350,474 03	350,474 03	350,474 03	1,051,422 09
Alabama	223,028 93	223,028 93	223,028 93	669,086 72
Louisiana	—	*318,612 76	159,306 38	477,919 14
Mississippi	—	†254,890 20	127,445 10	382,335 30
Tennessee	477,919 13	‡477,919 13	477,919 13	1,433,757 39
Kentucky	477,919 13	477,919 13	477,919 13	1,433,757 39
Ohio	669,086 78	669,086 78	669,086 78	2,007,260 34
Missouri	127,445 10	127,445 10	127,445 10	382,335 30
Indiana	286,751 48	286,751 48	286,751 48	860,254 44
Illinois	159,306 38	159,306 38	159,306 38	477,919 14
Michigan	95,383 83	95,383 83	§95,383 83	286,751 49
Arkansas	45,583 83	‖145,583 83	95,583 83	286,751 49
	9,030,263 49	9,703,766 45	9,307,614 97	28,101,644 91

* This sum was transferred under date of April 13, 1837.
† This sum was transferred under date of May 23, 1837.
‡ $125,000 of this sum was transferred under date of June 3, 1837.
§ $600 of this sum was transferred under date of July 15, 1837.
‖ $100,000 of this sum was transferred under date of June 7, 1839.

TREASURER'S OFFICE,
November 14, 1839.

WM. SELDEN,
Treasurer of the United States.

Your ralator further shows unto this honorable court, that none of the fourth instalments set apart, and appropriated and so apportioned and ascertained as afore-

said, has been deposited with any of the said several States, or any part thereof, and that the fourth instalment aforesaid yet remaining to be deposited with the Treasurer of the State of Virginia under the provisions of said sections of said Act of Congress, and as ascertained, apportioned, set apart and appropriated thereunder, as aforesaid, is the sum of $732,809.33.

That on the 2nd day of October, 1837, the Congress of the United States, then being in extra session, and having before it the action of the then said Secretary of said Treasury, including the said ascertainment of the said several amounts so apportioned, appropriated, and yet to be deposited with the said several States, and the amount of each of said instalments and of the said several amounts or instalments deposited with said States as aforesaid, under the form of certificates of deposit, prescribed by said Secretary and the form of said prescribed certificates; and the said Congress being also, at the same time, informed that there was not then in the Treasury of the United States sufficient available funds to make the deposit of the said fourth instalment so set apart and appropriated as aforesaid, passed the following act, to wit:

"An Act to Postpone the Fourth Installment of Deposit with the States.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the transfer of the fourth installment of deposits directed to be made with the States under the thirteenth section of the act of June twenty-third, eighteen hundred and thirty-six, be, and the same is hereby, postponed till the first day of January, one thousand eight hundred and thirty-nine: *Provided*, That the three first instalments under the said act shall remain on deposit with the States until otherwise directed by Congress.

"Approved October 2, 1837."

That on the 1st day of January, A. D. 1839, the time to which the deposit of the said fourth installment was postponed by the said last named Act of Congress, there was not then a sufficient amount in the Treasury of the United States available and applicable to public purposes, after the payment of other appropriations made to meet the current expenses of the United States, to make the said required deposit with all of said several States, as there was then only available the sum of $2,765,342.36—a large amount of the public funds was then unavailable, by reason of having been deposited in local State banks from which it could not have been recovered.

In his official report of December, 1838, then transmitted to Congress, the then said Secretary of the Treasury of the United States, in reference to the then condition of the public funds and as to the making of the required deposit of the said fourth instalment, said as follows, to wit:

> "When an unusual excess existed in the Treasury, it was proposed to place that fourth instalment with the States, for safe keeping, till needed; but before it became payable, the money was wanted to discharge existing appropriations. The deposit of it was, therefore, postponed, by Congress, till next January, and the money has been used by the United States, to which it belonged, without incurring the expense and inconvenience to all the parties concerned, of paying and then immediately recalling it.
>
> "That installment is not a debt due to the States, and, hence, is not required to be paid like an appropriation for the public service.
>
> "Yet, the remark may be properly added that, *if a surplus should hereafter accrue, large enough, after defraying all the existing charges imposed by Congress upon the Treasury, to make the deposit originally contemplated, this department, with its present views, would feel bound*

to carry it into effect, unless Congress, in the meantime, should further modify the laws now in force in relation to the subject."

That in his official report of December, 1839, then also transmitted to Congress, the then said Secretary of the said Treasury, after stating that the amount then in the Treasury of the United States, available for public purposes, was only $1,556,384.93, said, as to said deposit of the fourth instalment aforesaid, as follows, to wit:

> "From these statements it must be perceived that our condition in relation to the deposit of another instalment of public money with the States, remains much the same as at the close of the year 1838, consequently, the *views then expressed by the department* have continued to govern its course."

The amount of money in said Treasury on the first day of January, 1841, was less than $1,000,000.00.

That the Congress of the United States, in the month of August, 1841, having before it the then condition of the public funds in the said Treasury, and being then well informed that its legislation aforesaid and the acceptance of the terms and conditions thereby prescribed by the said several States, had operated to pledge the faith of the United States, whenever a surplus should thereafter accrue large enough, after defraying all the existing charges imposed by it upon the Treasury, to make the deposit of said fourth instalment, and having before it the official reports of said Secretary of said Treasury of December, 1838, and December, 1839, hereinbefore in part quoted from, by the third section of its act, approved August 13, 1841, continued in force the legislation aforesaid as follows:

"SEC. 3. *And be it further enacted*, That the act entitled 'An act to regulate the deposits of the public money,' approved on the twenty-third day of June, eighteen hundred and thirty-six, *excepting the thirteenth and fourteenth sections thereof*, be, and the same hereby is, repealed."

Your relator further shows unto this Honorable Court that since the said 13th day of August, 1841, and from the 1st day of January, 1841, there has not been in the Treasury of the United States a surplus of money "large enough after defraying all the existing charges imposed by Congress upon the Treasury" to make the said required deposit of said fourth instalments with said several States, until within the last few years, and that there has been no further legislation upon the subject and that no deposit has been made with your relator or with any of the other of said States, of any part or portion of said fourth instalment.

Your relator further shows unto this Honorable Court that Charles J. Folger, the present Secretary of the Treasury of the United States, in his official report of December 3, 1883, which has been transmitted to said Congress, shows that the total ordinary revenues or receipts of the United States, from all sources, for the fiscal year ending June 30th, 1883, were $398,287,581.95, and that the total ordinary expenditures of the United States, for the same period, were $265,408,137.54, leaving as the surplus revenue or money of the United States, for the fiscal year ending June 30, 1883, the sum of $132,879,444.41; and that in the said last-mentioned report the said last-named Secretary states the total receipts of the United States, for the fiscal year ending June 30th, 1884, actual and estimated, under existing

law, to be $343,000,000, and that its total expenditures, for the same period, actual and estimated, to be $258,-000,000, and that after meeting the requirements of the sinking fund of the United States, estimated to be $45,-816,741.07, there would be a balance left of $39,183,-258.93; and as a matter of fact, your relator says that there is now in the Treasury of the United States a sufficient sum of money "after defraying all the existing charges imposed by Congress upon the Treasury" aforesaid, and not needed or wanted by the Secretary thereof to meet appropriations by law, or to meet the interest upon all of the public debt accruing, or to meet all the expenditures of the Government, estimated or ascertained by said Secretary for the present fiscal year, to make the deposits of the said fourth instalment with all of said twenty-six States with which said deposits were directed to be made as aforesaid.

That by the second section of the Act of Congress of March 3rd, 1881, entitled "An act making appropriations for the sundry civil expenses of the Government for the fiscal year ending June 30th, 1882, and for other purposes," the Congress of the United States limited the power of the Secretary of said Treasury over the surplus money of the United States in the Treasury to that amount thereof not theretofore appropriated by Congress, which limitation covered the amount of $9,367,214.97, set apart and appropriated by the said section of said Act of Congress of June 23rd, 1836, and yet remaining to be deposited with your relator and the others of said several States in the sums before named respectively. The said second section of said Act of Congress of March 3rd, 1881, is as follows:

"SEC 2. That the Secretary of the Treasury may at

> any time apply the surplus money in the Treasury, *not otherwise appropriated*, or so much thereof as he may consider proper to the purchase or redemption of United States bonds: *Provided*, That the bonds so purchased or redeemed *shall constitute no part of the sinking fund*, but shall be cancelled."

That, after the approval of said last mentioned section of said Act of Congress of March 3, 1881, the said present Secretary of the Treasury, Charles J. Folger, in his official report of December, 1882, which has been transmitted to Congress, says, in relation to the application of said surplus revenue to the purchase or redemption of United States bonds, as follows:

> "I do not perceive how a Secretary could justify himself to the country at large in paying the Government debt at ruling premiums, when there is *no requirement of law to be answered*, and no *convenience* or *pressing need* of the Government to be met."

Your relator further shows unto this honorable Court that the proposition offered by the act of June 23rd, 1836, to your relator and the other said States, was the custody of one certain sum of money, duly ascertained and proclaimed to your relator and said States as aforesaid, and that your relator and the other said States, by their said respective laws, agreed to receive the whole of said sums apportioned to them respectively, as aforesaid, —the entire four installments, and not three only; that the said proposition and its acceptance aforesaid constituted one entire and indivisible contract to be performed by the United States through the Secretary of the Treasury of the United States, and by your relator and the other of said States respectively, and that upon the faith of said contract your relator incurred liabilities which

became necessary to be performed, and that the consideration for said contract, independently of the said proposition and its said acceptance and the obligations incurred by your relator in relying upon its performance, was the the safe keeping and repayment of the sums deposited and to be deposited, in the manner and upon the notices hereintofore mentioned and prescribed; and by reason of said premises and the present condition of the public funds now constituting such a large surplus, your relator is legally entitled to have deposited with it the said sum of $732,809.33, in the manner hereinbefore set forth.

Your relator further shows unto this honorable court that said John J. Moran, as its special agent aforesaid, by his letter of date, the sixteenth day of October, 1882, made a demand upon the present Secretary of the Treasury of the United States, Charles J. Folger, that deposit be made with it of said sum of $732,809.33, being the fourth installment set apart and appropriated as aforesaid, a copy of which said demand is as follows:

"WASHINGTON, D. C., *October 16th*, 1882.

"*Hon. Charles J. Folger, Secretary of the Treasury:*

"*Sir:* Under the provisions of an Act of Congress, approved June 23, 1836, entitled 'an act to regulate the deposit of public money,' (See Statute at large, vol. 5, p. 55, sec. 13 and 14,) the state of Virginia became entitled to a proportionate share of the surplue revenue of the United States, the distribution of which was specifically provided for in said act.

"By the terms of said act it was necessary for the State of Virginia to signify her willingness to accept her proportion of said surplus revenue. Accordingly, by an act of the General Assembly of Virginia, approved December 20, 1836, that State accepted the provisions of said Act of Congress. A copy of said act of the General Assembly of Virginia is on file in your Department, accompanied by a letter from the then Governor of Virginia to the Hon. Levi Wood-

bury, your predecessor then in office, bearing date December 21, 1836.

"The fourteenth section of said Act of Congress required the Secretary of the Treasury to make the deposit of Virginia's proportion of said surplue revenue in four quarterly instalments, of equal parts, the last of which fell due October 1, 1837.

"By the Act of Congress, approved October 2, 1837, (statutes at large, vol. 5, p. 201,) the fourth instalment was postponed until Jan. 1, 1839.

"It was ascertained by your predecessor, then in office, that Virginia's share of said surplue revenue amounted to the sum of $2,931,237.32, and, accordingly, three quarterly instalments were deposited with the State of Virginia amounting to the sum of $2,198,427.99, leaving the fourth installment, to wit: the sum of $732,809.33 to be deposited with the State of Virginia on the first day of January, 1839. The last named amount has never been deposited with the State of Virginia, nor any part thereof.

"As there has been no Act of Congress since the passage of said act of October 2, 1837, in any manner affecting the provisions of said act of June 23, 1836, and as the last named act is mandatory in character, the State of Virginia is still entitled to receive the sum of $732,809.33.

"As the special agent of the State of Virginia, appointed and commissioned by the Governor, in pursuance of an act of the General Assembly of Virginia, approved March 3, 1880, a copy of which appointment and commission, and of said act, are now on file in your department, I beg leave to request that your will cause the said sum of $732,809.33 to be deposited with the State of Virginia, in accordance with the provisions of said act of June 23, 1836. To that end I respectfully request that you cause to be prepared four certificates of deposit, each for one fourth part of said sum of $732,809.33, and place the same in my hands for the signature of the treasurer of the State of Virginia. I will return the same to you with the signature of said State authority attached, and the deposit of said sum can then be made as required by law. I have the honor to be,

"Very respectfully, your obedient servant,

"J. J. MORAN,

"*Special Agent for the State of Virginia.*"

Your relator further shows unto this Honorable Court, that the said demand has not been complied with by the said Charles J. Folger, Secretary of the Treasury aforesaid, and no reply thereto has been made by him, except that in his official report of December 3, 1883, which has been transmitted to Congress, the said named Secretary, after saying that "a surplus is in hand," and that your relator and the State of Arkansas, have made a "formal demand" and "seriously asked," that the deposit be made with them of the fourth instalments which have been apportioned and appropriated as aforesaid to them respectfully, under said sections of said act of June 23, 1836, out of the present existing surplus money in the said Treasury and, after giving his reasons in the premises, concludes the subject matter of those reasons by saying as follows:

> "For these reasons and following in the practice of this Department, payment to those States *from the existing surplus* has been withheld and will continue to be until Congress directs another course."

And your relator further makes known to this honorable court that it is entirely without remedy in the premises unless the same be effected by the power and interposition of this court in granting its writ of mandamus. And your relator therefore prays that a writ of mandamus may issue out of this honorable court, directed to the said Charles J. Folger, Secretary of the Treasury of the United States, commanding him to deliver the said fourth instalment, being the sum of $732,809.33 set apart and appropriated as aforesaid, to the Treasurer of the State of Virginia on receiving a certificate or certificates of deposit therefor, signed by said Treasurer of the State of Virginia as such, in the form aforesaid, which has been prescribed as aforesaid by the Secretary of said

United States Treasury, in pursuance of the provisions of section 13 of the said deposit Act of Congress of June 23rd, 1836.

Commonwealth of Virginia, by its special agent,

JOHN J. MORAN.

WESTEL WILLOUGHBY,
FENDALL E. ALEXANDER,
Of Counsel.

John J. Moran, being duly sworn, says that he is the special agent of the foregoing named relator, the Commonwealth of Virginia, duly appointed and commissioned under the great seal thereof, as set forth in the said foregoing petition; that he has read the same and knows the contents thereof and the facts therein set forth upon his personal knowledge, are true, and those set forth upon information and belief, he believes to be true.

JOHN J. MORAN.
Special agent of the State of Virginia.

Subscribed and sworn to before me, this 30th day of January, A. D., 1884.

[NOTARIAL SEAL] THOMAS W. SORAN,
Notary Public.

CLAIM

OF THE

STATE OF VIRGINIA

FOR THE FOURTH INSTALLMENT

UNDER THE

DEPOSIT ACT OF JUNE 23, 1836.

ARGUMENT OF COUNSEL.

W. WILLOUGHBY,

F. E. ALEXANDER.

NAME OF THE STATE.	DATE OF ACTS OF ACCEPTANCE BY STATES.	FOURTH INSTALLMENT DUE.
MAINE,	January 26, 1837,	$318,612.75
NEW HAMPSHIRE,	January 11, 1837,	223,028.93
MASSACHUSETTS,	January 19, 1837,	446,057.86
VERMONT,	November 17, 1836,	223,028.93
CONNECTICUT,	December 29, 1836,	254,890.20
RHODE ISLAND,	November 10, 1836,	127,445.10
NEW YORK,	January 10, 1837,	1,338,173.57
NEW JERSEY,	November 4, 1836,	254,890.20
PENNSYLVANIA,	December 22, 1836,	955,838.26
DELAWARE,	January 16, 1837,	95,583.83
MARYLAND,	December 30, 1836,	318,612.75
VIRGINIA,	December 20, 1836,	732,809.33
NORTH CAROLINA,	January 11, 1837,	477,919.13
SOUTH CAROLINA,	December 21, 1836,	350,474.03
GEORGIA,	December 26, 1836,	350,474.03
ALABAMA,	December 16, 1836,	223,028.93
LOUISIANA,	February 7, 1837, March 13, 1837,	159,306.38
MISSISSIPPI,	May 2, 1837,	127,445.10
TENNESSEE,	October 29, 1836,	477,919.13
KENTUCKY,	December 16, 1836,	477,919.13
OHIO,	December 19, 1836,	669,086.78
MISSOURI,	December 29, 1836,	127,445.10
INDIANA,	December 21, 1836,	286,751.48
ILLINOIS,	December 17, 1836,	159,306.38
MICHIGAN,	July 22, 1836,	95,583.83
ARKANSAS,	October 29, 1836,	95,583.83
Total amount due all of said States,		$9,367,214.97

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ARGUMENT.

A claim is made on behalf of the State of Virginia by her Special Agent, Hon. John J. Moran, acting under authority of a legislative act thereof, that the Secretary of the Treasury of the United States deposit with the treasurer of the State of Virginia the sum of $732,809.33, until called for by law, in pursuance of the following legislation:

The 13th and 14th sections of the act of Congress, approved June 23d, 1836, entitled "An Act to regulate the deposits of the public money," (5th Statutes at Large, p. 55,) are as follows:

"SEC. 13. *And be it further enacted*, That the money which shall be in the Treasury of the United States on the first day of January, eighteen hundred and thirty-seven, reserving the sum of five millions of dollars, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall, by law, authorize their treasurers, or other competent authorities, to receive the same on the terms hereinafter specified; and the Secretary of the Treasury shall deliver the same to such treasurers or other competent authorities, on receiving certificates of deposit therefor, signed by such competent authorities, in such form as may be prescribed by the Secretary aforesaid; which certificates shall express the usual and legal obligations, and pledge the faith of the State for the safe-keeping and repayment thereof, and shall pledge the faith of the States receiving the same to pay the said moneys, and every part thereof, from time to time, whenever the same shall be required by the Secretary of the Treasury, for the purpose of defraying any wants of the public Treasury, beyond the amount of the five millions aforesaid: *Provided*, That if any State declines to receive its proportion of the surplus aforesaid, on the terms before named, the same shall be deposited with the other States, agreeing to accept the same on deposit, in the proportion aforesaid: *And provided, further*, That when said money, or any part thereof, shall be wanted by the said Secretary to meet appropriations by law, the same shall be called for, in ratable proportions, within one year, as nearly as conveniently may be, from the different States with which the same is deposited, and shall not be called for in sums exceeding ten thousand dollars from any one State, in any one month, without previous notice of thirty days for every additional sum of twenty thousand dollars which may at any time be required.

"SEC. 14. *And be it further enacted*, That the said deposits shall be made with said States in the following proportions, and at the following times, to wit: one quarter part on the first day of January, eighteen hundred and thirty-seven, or as soon thereafter as may be; one quarter part on the first day of April, one quarter part on the first day of July, and one quarter part on the first day of October—all in the same year."

In the 5th Statutes at Large, p. 201, is found the following:

"AN ACT TO POSTPONE THE FOURTH INSTALLMENT OF DEPOSIT WITH THE STATES.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the transfer of the fourth installment of deposits directed to be made with the States under the thirteenth section of the act of June twenty-third, eighteen hundred and thirty-six, be, and the same is hereby, postponed till the first day of January, one thousand eight hundred and thirty-nine: *Provided*, That the three first installments under the said act shall remain on deposit with the States until otherwise directed by Congress.

"Approved October 2, 1837."

By the third section of the act of Congress approved August 13, 1841, (5th Statutes at Large, p. 440,) it was enacted as follows, to wit:

"SEC. 3. *And be it further enacted*, That the act entitled 'An Act to regulate the deposits of the public money,' approved on the twenty-third day of June, eighteen hundred and thirty-six, *excepting the thirteenth and fourteenth sections thereof*, be, and the same hereby is, repealed."

The twenty-six States, then in existence, each passed acts of acceptance of the provisions of the act of Congress of June 23d, 1836, and the first three installments were deposited as provided by said sections, as follows:

Maine	$955,838 25	Georgia	$1,051,422 09
New Hampshire	669,086 79	Alabama	669,086 79
Massachusetts	1,338,173 58	Louisiana	477,919 14
Vermont	669,086 79	Mississippi	382,335 30
Connecticut	764,670 60	Tennessee	1,433,757 39
Rhode Island	382,335 30	Kentucky	1,433,757 39
New York	4,014,520 71	Ohio	2,007,260 34
New Jersey	764,670 60	Missouri	382,335 30
Pennsylvania	2,867,514 78	Indiana	860,254 44
Delaware	286,751 49	Illinois	477,919 14
Maryland	955,838 25	Michigan	286,751 49
Virginia	2,198,427 99	Arkansas	286,751 49
North Carolina	1,433,757 39		
South Carolina	1,051,422 09		28,101,644 91

Although the above legislation is still in force, the fourth installment has never been deposited as the law requires.

The sum in the Treasury on the 1st day of January, 1837, over and above the $5,000,000 directed to be reserved and to be deposited with the States, was $37,468,859.88.

The act of the Legislature of Virginia, in accepting the offer of the United States and the terms and conditions of the act of Congress of June 23d, 1836, was as follows:

"An Act declaring the willingness of the State of Virginia to accept the deposit of its proportion of the moneys that by the thirteenth section of the act of Congress entled 'An Act to regulate the deposits of the public money,' approved the twenty-third of June, one thousand eight hundred and thirty-six, are to be deposited with the several States, and authorizing the treasurer of the Commonwealth to receive the same.

Passed December 20, 1836.

Whereas, by the thirteenth section of the act of Congress of the United States, entitled "An Act to regulate the deposits of the public moneys," approved the twenty-third of June, one thousand eight hundred and thirty-six, it is enacted "that the money which shall be in the Treasury of the United States on the first day of January, one thousand eight hundred and thirty-seven, reserving the sum of five millions of dollars, shall be deposited with the several States," under the provisions and on the terms therein contained; and while the General Assembly regards any system of taxation by the Federal Government producing more revenue than is necessary for the wants of the Government economically administered as impolitic and unjust; and denies the right of the Congress of the United States to raise revenue for the purpose of deposit or distribution among the States: nevertheless, believing the surplus money in the Treasury to have arisen under extraordinary circumstances, not likely to continue, and considering the provisions of the said act to be a temporary expedient to relieve a redundant Treasury, and being willing, in good faith, under such circumstances, to receive the proportion of said surplus proposed to be deposited with the State of Virginia: Therefore,

Be it enacted by the General Assembly of Virginia, That the Treasurer of the Commonwealth, for the time being, be, and he is hereby, appointed and authorized to receive, on the terms recited in the thirteenth section of the act of Congress, entitled "An Act to regulate the deposits of the public money," approved the twenty-third of June, one thousand eight hundred and thirty-six, the proportion of moneys thereby directed to be deposited with the several States, that according to the provisions of that section may, can, or ought to be deposited with this State. And the said treasurer is hereby fully empowered and authorized, as any sum or sums may from time to time be delivered to him by the Secretary of the Treasury of the United States, for or on account of said proportion, liable as aforesaid to be deposited with this State, to sign and deliver, to the said Secretary of the Treasury, such certificate or certificates of deposit therefor as are prescribed by, or may be required under and by virtue of the provisions of the said recited section, and to do and perform upon the faith and responsibility of this State any act necessary to entitle him, as the authorized functionary of the State, to have deposited with the State that proportion of the surplus aforesaid that by the provisions of the said section may, can, or ought to be deposited with this State.

"*And be it further enacted*, That all moneys deposited with, or received by, the treasurer under the authority hereby given, shall be paid into the public treasury of this State, and deposited, as public moneys belonging to the commonwealth are by law directed to be paid and deposited; and the treasurer shall, and he is hereby declared to, be officially liable, and his sureties responsible therefor, in like manner as for other moneys paid into the public treasury.

"This act shall be in force from the passing thereof."

The form of the certificate of deposit, prescribed by the Secretary of the Treasury of the United States, as the law required, was as follows:

"Whereas, by the thirteenth section of an act of Congress of the United States, entitled, 'An act to regulate the deposits of the public money,' approved the 23d of June, 1836, it was enacted 'that the money which shall be in the treasury of the United States on the first day of January, 1837, reserving the sum of five millions of dollars, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall by law authorize their treasurer, or other competent authorities, to receive the same, on the terms hereafter specified; and the Secretary of the Treasury shall deliver the same to such treasurer or other competent authorities, on receiving certificates of deposit therefor, signed by such competent authorities in such form as may be prescribed by the Secretary aforesaid.

"And whereas, the State of has, by an act of its legislature, passed on the day of , one thousand eight hundred and thirty , authorized and directed the of the said State to receive its proportional share of the said surplus moneys of the United States, on deposit with the said State upon the terms specified in the said act of Congress;

"And whereas the Secretary of the Treasury, in pursuance of the provisions of the said act of Congress, and in conformity with the provisions of the said act of the legislature of the State of , has delivered to the thereof the sum of dollars and cents, the same being part of the installment or one-fourth part of the ratable proportion of the said State in the surplus money in the treasury on the first of January, 1837:

"Now, therefore, be it known that I, , do hereby certify that the said sum of dollars and cents has been deposited by the Secretary of the Treasury with the State of , and that for the safe-keeping and repayment of the same to the United States, in conformity to said act of Congress, the State of is legally bound, and its faith is solemnly pledged; and in pursuance of the authority of the act of the legislature aforesaid, for and in behalf of the said State, I hereby affix my signature and seal, in testimony of the premises, and of the faith of the said State to pay the said money so deposited, and every part thereof, from time to time, whenever the same shall be required by the Secretary of the Treasury, for the purposes and in the manner and proportions set forth and described in the said recited 13th section of the act of Congress aforesaid, and by a requisition or notice similar in form to that hereto annexed, addressed to the care of the governor of said State

"Signed and sealed, this day of , one thousand eight hundred and thirty .

"Attest:"

By the report of the treasurer of the State of Virginia, of February

26th, 1839, it appears that the money deposited with Virginia had been disposed of as follows:

Subscription to Banks - - - - -	$732,809.33
Loans to Banks - - - - - -	1,200,000.00
Loan to Railroad - - - - - -	98,065.83
Retained by the Commonwealth - -	167,552.83
	2,198,427.99

It appears that on the 1st day of January, 1839, the time to which the deposit of the fourth installment was postponed by act of Congress of October 2, 1837, there was not a sufficient amount in the treasury of the United States to make such deposit. The report of the Secretary of the Treasury of December, 1838, shows the balance, in the treasury, after the payment of appropriations, available and applicable to public purposes, to have been $2,765,342.36.

At that time there were large outstanding accounts against local banks in which money had been deposited, which were not considered *available*. In his report of that date, the Secretary says:

"When an unusual excess existed in the treasury, it was proposed to place that fourth installment with the States, for safe keeping, till needed; but, before it became payable, the money was wanted to discharge existing appropriations. The deposit of it was, therefore, postponed, by Congress, till next January, and the money has been used by the United States, to which it belonged, without incurring the expense and inconvenience to all the parties concerned of paying and then immediately recalling it.

"That installment is not a debt due to the States and, hence, is not required to be paid like an appropriation for the public service.

"Yet, the remark may be properly added that, if *a surplus should hereafter accrue, large enough, after defraying all the existing charges imposed by Congress upon the Treasury, to make the deposit originally contemplated, this department, with its present views, would feel bound to carry it into effect, unless Congress, in the meantime, should further modify the laws now in force in relation to the subject.*"

In his report of December, 1839, the Secretary of the Treasury, says:

"From these statements it must be perceived that our condition in relation to the deposit of another installment of public money with the States, remains much the same as at the close of the year 1838, consequently *the views then expressed by the department* have continued to govern its course."

He then reports in the treasury, available for public purposes, $1,556,384.93. January 1st, 1841, the sum was less than one million.

Since that time there has not been in the treasury, at any time, a surplus large enough, *after defraying the existing charges imposed by Congress upon the treasury,* to make the deposit of the fourth installment until within the present decade, and for this reason and perhaps, partly, because those in charge of the governments of the States since that time have lost sight of these acts, no demand has heretofore been made by any of the States. The Governors and other authorities of some of the States are now, however, considering this subject and contemplating measures to bring about a compliance with these provisions of the law.

The surplus of revenue now in the treasury, not subject to any charges imposed by Congress, has become so great that in some quarters there has arisen a demand that there should be a distribution of it among the States. The Secretary of the Treasury, in regard to the present increasing surplus, in his report of December, 1882, says:

"What now perplexes the Secretary, is not wherefrom he may get revenue and enough for the pressing needs of the Government, *but whereby he shall turn back into the flow of business the more than enough for those needs that has been drawn from the people.* There are now in the Treasury unused assets to a large amount, and the daily receipts into the Treasury from customs and internal revenue taxation are about a million and a quarter."

The evils of the great accumulation "in excess of the needs of the Government" are well portrayed in the same report.

It may throw some light upon the intent and object of the acts of Congress of 1836, 1837, and 1841, to refer to the history relative to such deposits.

Very early and throughout our history the necessity has been recognized of having suitable places for making deposits of the public funds. As early as February 25, 1791, a bank of the United States was established with a capital of $10,000,000, with certain branch offices for discount and deposit only. (1st Statutes at Large, p. 191.)

On the 10th of April, 1816, (3d Statutes at Large, p. 266,) was established the famous United States Bank, with a capital of $35,000,000, the Secretary of the Treasury being authorized to subscribe stock to the amount of $7,000,000, the principal bank to be in Philadelphia and having its branch banks in different States, where subscriptions were made. The history of this bank is a large part of the history and policy of this country for the twenty years of its existence. In 1824 it was thus described by the Supreme Court of the United States in Osborn vs. Bank of the United States, (9th Wheaton:)

"The bank of the United States is now identified with the administration of the National Government. It is an immense machine, economically and beneficially applied to the fiscal transactions of the Nation. Attempts have been made to dispense with it, and they have failed. Serious and very weighty doubts have been entertained of its constitutionality, but they have been abandoned, and it has now become the functionary that collects, the depository that holds, the vehicle that transports, the guard that protects, and the agent that distributes and pays away the millions that annually pass through the National Treasury, and all this, not only without expense to the Government, but after paying a large bonus and sustaining losses to a large amount, furnishing the most ample security for so immense a charge."

And yet, near the expiration of its charter in 1836, to wit, in 1833, President Jackson claimed that this bank was an insecure institution for the deposit of the public funds, and formed the determination that the deposits, then amounting to $9,891,000, should be removed therefrom and placed in a large number of local State banks in the different States. The Secretary of the Treasury, Duane, refused to be instrumental in such removal, for which he was removed from his office, and Taney, then Attorney General, was made Secretary of the Treasury in his stead, and he, by order of the President, caused the removal of the deposits to be made from the United States bank to the local State banks selected by the President, or by agents appointed by him, in October, 1833.

One result of this was an enormous increase of the apparent prosperity of State banks. The country became inundated with the bills of these banks and business of all kinds became very much inflated. January 1, 1834, the banking capital of the country was $200,000,000; bank notes were $95,000,000; loans and discounts, $324,000,000. Two years later, January 1, 1836, the banking capital was $251,000,000; bank notes were $140,000,000, and loans and discounts were $457,000,000.

At the same time there came to the treasury an unprecedented revenue, a large part being from the sales of public lands. By the report of the Committee of Ways and Means, January 11, 1837, it is stated that the revenue from customs of the year 1836 was $23,000,000; from lands $24,500,000, and from other sources $620,000. This was also in State banks.

Many of these banks, and some in which were deposited the public funds, became embarrassed. The public funds were being used for purposes of speculation, and therefore became, as reported by the Secretary of the Treasury, *unavailable* for public purposes. President Jackson, in his message of December, 1836, says: "The banks proceeded to make loans upon the money deposited with them and then convert into banking capital, and in this manner it has tended to multiply bank charters, and has had a great agency in producing a spirit of wild speculation." This state

of things excited great apprehension in the minds of thoughtful men. They had some premonitions of the storm of 1837. They realized that the apparent prosperity of these local banks was largely fictitious.

At the same time there was an immense surplus in the treasury not at all quired for public uses. The banks were not regarded as safe depositories. The charter of the United States Bank expired in March, 1836.

The questions presented were: What was to be done with such large surplus? How could it be safely protected from the dangers which then threatened it under the then existing laws?—*the great want being a place of safe deposit.*

Even before this time, in December, 1829, President Jackson, in his annual message, in anticipation of the extinction of the public debt and of a prospective surplus, had said: "That the most safe, just and federal disposition which could be made of the surplus revenue would be its apportionment among the several States according to the ratio of their representation." In 1835, John C. Calhoun made the first suggestion in Congress for the disposal of this surplus. He said: "Let us deposit more of the public money with the States and place it in permanent deposit instead of temporary." (Parton's Life of Jackson, 3d vol., p. 591.) The bill introduced by Calhoun in December, 1835, came up for action on May 3d, 1836, when Senator Wright, of New York, moved an amendment, directing the Treasurer to invest the surplus beyond $7,500,000 in State bonds, bearing interest. Calhoun then proposed a substitute, providing that the Treasurer shall "deposit" with the States, in four quarterly installments, the surplus above $7,500,000 actually in hand at the end of 1836, in proportion to congressional representation, to bear no interest, but to be represented by marketable bonds bearing interest from the date of sale or transfer by the United States, and that they should be liable to recall as soon as the General Government needed money. He said: "Such a measure would place the States in the relation in which it was universally believed they would stand to this Government at the time of its formation and make them jealous and vigilant guardians of its action on all measures touching the disbursement and expenditures of the Government," and "would arrest the fatal tendency to the concentration of the entire power of the system of this Government, *if any power on earth can.*" He further said: "After bestowing upon the subject the most deliberate attention, he had come to the conclusion that there was no other so safe, so efficient, and so free from objections as the one he had proposed." His idea, as will be seen, was not to make an absolute relinquishment of the sums deposited with the States. They were to be repaid on demand, "but," said he, "Congress would be very reluctant to

make the call, and would not make it until from the wants of the treasury it shall become absolutely necessary, and in order to avoid such necessity it would resort to a just and proper economy in the public expenditures as the preferable alternative."

The principles of this proposition of Calhoun's were very nearly identical with those embodied in the bill as it finally passed and became a law on the 23d of June, 1836. This act, while it thus provided for the safe deposit of all the surplus over $5,000,000, also provided for the deposit of that still remaining in local State banks to be selected by the Secretary, who was authorized to make contracts with them as to duties and services, but which were subject to rigid scrutiny and required to make frequent reports.

As we have before seen, however, the act of August 13, 1841, repealed all these provisions of the act of June 23d, 1836, as to local banks, expressly retaining the 13th and 14th sections thereof, which are the foundation of this claim by the State of Virginia.

From this mere outline of the history of the means for providing for deposits we cannot fail to see that at least one prominent consideration was the *safety and security* of such deposits.

How best to ensure the safety and security of such deposits has been a perplexing question throughout most of our history. The history of the Sub-treasury is an illustration. The report of the Secretary of the Treasury of December, 1839, says that the loss of the Government by money deposited in banks, including depreciation on their notes taken for public dues, had then exceeded, since 1793, the sum of $6,500,000.

At present the needs of the Government require the services of the Treasurer, 9 independent treasury officers, and 135 national bank depositories. (See title 40, Revised Statutes.)

A prominent object of the act of June 23d, 1836, entitled "An Act to regulate the deposits of the public money," was then evidently *safety* and *security*. The certificates of deposit to be given by the States under the said act were to "express the usual and legal obligation, and pledge the faith of the States for the *safe-keeping* and repayment thereof whenever the same shall be required,"

This certainly shows some benefit to the Government as well as to the States, and, if so, it was a sufficient consideration to constitute it a contract.

On the 28th of February, 1837, in discussing a proposition tending, as he said, to make the principles of this distribution a settled policy of the country, and which, for that reason, he opposed, James Buchanan said:

"What were the principles upon which the deposit bill of the last session rested? There was then a vast sum of public money beyond the wants of the Government in the deposit banks, whilst an absolute certainty existed that, at the end of the year this surplus would be greatly increased. At that time these banks were not bound to pay any interest on their deposits. These accumulations of public money were loaned out by them to individuals, whilst all the profits arising from such loans went into the pockets of their stockholders. A wild spirit of speculation was thus fostered which threatened to destroy the regular business of the country, and to convert our public domain into paper money. The enormous evils of this system were palpable. The banks were then inflicting deep injuries upon the country by the manner in which they used this money, and it was every day becoming more and more uncertain whether they would be able to meet the demands of the Government when called upon for this purpose. Under these peculiar circumstances, what was to be done? We were compelled to choose between two great evils. We must either have suffered the money to remain in the banks and subjected the country to the consequences, or it becomes our duty to deposit it with the States and give them the advantage of using it until it should be required by the wants of the Government. No other practical alternative could be presented. For my own part I felt no hesitation in making my choice."

In September, 1837, after three installments had been deposited under the act, and at the extra session of Congress then called in consequence of the prevalent distress, there not being sufficient money in the treasury to make the deposit of the fourth installment, due at the time, then just at hand, various propositions were made and amendments offered, which, after a long discussion, finally resulted in a compromise between the various conflicting views, which compromise was the postponement for a short period of the deposit of the fourth installment with the States, but as a part compensation therefor Congress by the act of October 24, 1837, enacted that "the three first instalments under the said act shall remain on deposit with the States until otherwise directed by Congress."

The following extracts are taken from the discussion in Congress upon the bill to postpone the fourth installment, as the same is reported in the Congressional Globe of the twenty-fifth Congress, first session:

Mark H. Sibley, of New York, one of the ablest lawyers ever produced by that State, said among other things, September 22, 1837:

"Can any one fail to perceive that the arrangement which was entered into between the General Government and the States, contained all the attributes of a strictly legal and technical contract? What were the facts? The Federal Government found itself the owner of an immense surplus, scattered among innumerable local banks of limited capitals, and some, perhaps, of doubtful responsibility. These corporations, prompted by the semi-authoritative encouragement of the late Secretary of the Treasury, and stimulated by the desire of gain, were flooding the country with issues and floating it with a seeming prosperity. In this state of things it was deemed wise and prudent (and so it undoubtedly was) to withdraw our immense

revenues from these questionable depositories and place them where they would be safely and securely kept and returned when wanted, upon the *prescribed terms*. Sir, did not this condition of things present the strongest possible inducements for the new arrangement? Is not the safe-keeping and prompt return of your immense treasures a direct pecuniary advantage to this Government? Let the groans which have issued from the "White House" and from the halls of your financial department; let the bills which burden your table and the scenes in which you are now engaged, answer the question. We would not have had this black list of millions upon millions of *unavailable* funds if the revenues had all been deposited with the States as collected." But continued he: "Turn to the States—to New York for example. Did she not encounter pecuniary 'hazards' when she assumed the responsibility of 'the safe-keeping and repayment' of upwards of $5,000,000 of your money? Are you quite sure that she will sustain no loss when the time comes for gathering in and paying back this immense sum? Did not New York perform a valuable 'service' to this Government when she took upon herself the duty of safely investing so large a share of your surplus revenue? And has she not already made large 'expenditures' in performing this service, in legislation, the payment of officers, investigating titles, recording securities, and in various other forms which cannot now be estimated? I would not be surprised, sir, were the aggregate expense to the Government and people of my State, consequent upon the execution of their part of this contract, to amount to $200,000.

* * * *

"Contracts have been made between the States and their people, between citizen and citizen, public works have been undertaken, laborers employed systems of improvement and education undertaken or expanded, and the manifold affairs of men arranged upon the basis of the deposit law. Was it wise or just? Was it not cruel and perfidious to throw derangement, disappointment and confusion into all these relations of society? The country was staggering under revulsions. Ought it to be stricken again without allowing it time to rally and stand erect?

* * * *

"I would not grope in the thick darkness of the report of the Secretary of the Treasury to find out by it whether they had funds to pay the fourth installment. These funds were in the Treasury on the first day of January last, for we have his official statement of the facts. Being in the Treasury, they were set apart and *appropriated* to the States by Congress, and it could not be admitted that they had been applied to other uses without implying maladministration in that department."

Caleb Cushing of Massachusetts, on September 25th, 1837, says:

"Here it seems to me is a contract *in honor*, and so far as there can be a contract between the United States and the several States, a contract in law, there being reciprocal engagements for a valuable consideration on both sides. It is at any rate a *quasi* contract. They who impugn this view of the question, argue on the supposition that the act performed, or to be performed, by the United States, is an inchoate gift of money to the States. Not so. It is a contract of deposit and that contract is consummated and made perfect on the formal reception of any installment of the deposit by the States. Now, entertaining this view, I am asked by the administration to come forward and break this contract. True, a contract made by the Gov-

ernment of the United States cannot be enforced in law. Does that make it either honest or honorable for the United States to take advantage of its power and violate its pledged faith. I refuse to participate in any such breach of faith The donees of the deposit act seem to me to possess all the protection of a contract."

Daniel Webster, who voted against even a postponement advocating borrowing the money, if necessary, in order to make the deposit of the fourth installment, said:

"But he would put it to the honorable gentleman, (Silas Wright,) if any Government had made a contract, or excited an expectation, that a deposit would be made and the other party had acted on the faith of this assurance and had nearly completed his arrangements, whether it ought not to supply the means, even if it did not, at the time, possess them? And suppose it was the promise of a gift instead of a deposit, might it not be found more just to borrow than to defeat the expectation on which the other had acted? What was the *object* of this bill? It was *not to repeal*, but to *postpone* what was *hereafter to be fulfilled*. Such being the case, it was doubtful whether it could ever be transferred to the States with more convenience than it could now from the banks."

Henry A. Wise, of Virginia, who was strongly opposed to the passage of the original bill of June 23d, 1836, said, on September 27th, 1837:

"What have been the consequences of passing that bill? The States of the Union have taken that money as their own. They have taken it just as the Secretary of the Treasury told the deposit banks that he would have taken what was deposited with them as their own, for loan, for use, for trouble, for commerce. They have appropriated, used, and expended what has been given them, and have entirely anticipated the amount of the fourth installment yet to be paid them The *proposition* for this measure came from no State in this Union. You gratuitously passed a law giving them this money, and you have, by your own action here, unsought and uncalled for, induced them to incur large expenditures and heavy contracts. If you have not made strictly a contract with them, you have, wisely or unwisely, caused them to make contracts with others. Your gratuitous promise have caused them to enter into solemn obligations which they must keep in good faith, though you fail to keep your faith and to enable them to comply with their obligations. The case is submitted to me as a chancellor. A father promises to advance his son; the son, on the faith of the promise, makes a purchase. Shall the father not comply? Yes, sir. So saith equity, and so I say."

Mr. Crittenden, of Kentucky, on September 15th, 1837, said:

"Was the faith pledged by an act of Congress, to be so lightly broken? Was an expectation, based upon such ground, to be, with such indifference and facility, disappointed? Was it worth no effort, no exertion, no trouble, to keep a promise? To stand by law? To fulfill an engagement? The States were *invited* to accept this deposit; it was no boon of their soliciting; and now, after it has been offered, after it has been promised, after it has been accepted, after it has been spent, after num-

berless schemes and plans for its employment, all beneficial to the States, have been devised and settled, and are waiting the payment of this fourth installment for their completion, is it now the time to recede from an engagement? Is it now the time to break an engagement? Is it now the time to break a promise? Is it now the time to violate a pledge, and say that you have not got the money? Might it not be replied, you have got the money, but you will not let the States have it? Such, in fact, would be the effect of the passage of this bill. Yes, sir, the money is there; the money is in the banks; the States are willing to receive it; but Congress interposes, and by this bill, says no; you shall not receive it.

"We are told by the supporters and advocates of this bill that it must be passed, because it would be highly impolitic to borrow money in order to deposit it with the States. This, sir, is not the correct view of the case; this is not a fair statement of the question; this, sir, is not the question at all. The question is this: The States have been led to expect this fund, *on the faith of the law;* they have made improvements, entered into contracts, incurred expenses on the expectation of receiving this money, pledged them by the law; and now, sir, the question is, 'is there no right on the part of the States, is there no obligation on the part of the General Government to fulfill the law?' *Shall the law* be set aside on the mere plea of inconvenience? What, sir, is the question, the great question? Whether a *solemn law* shall be fulfilled, whether a pledge shall be redeemed, whether a promise shall be performed, whether there exists any obligation to fulfill promises given, and not to disappoint expectations gratuitously raised? Shall we be told, sir, that there exists no such obligation? It is, in my view, the highest obligation which attaches to any Government. Now, in answer to this, we are met by the plea of convenience. We are told that it would be very *inconvenient* to fulfill this contract with the States; that money will have to be borrowed for the purpose; and, therefore, since it would not be quite convenient to fulfill the obligation, the obligation ought to be broken, and *the faith of the law violated*."

Mr. Briggs, of Massachusetts, in the House, on September 21, 1837, said:

"What do gentlemen understand would constitute a contract? If a proposition, consisting of various conditions and limitations made by one party to another, accepted by that other, and three-fourths of its stipulations actually carried into effect, does not come within the legal and common understanding of a contract, I am unable to imagine what would."

Mr. Loomis, of Ohio, in the House, on September 21, 1837, said:

"The deposit act offered to the States the custody of *one certain sum of money;* that sum was ascertained by the Secretary and proclaimed to the States. The proposition was made to the States to receive the *whole* sum upon the terms specified in the statute; the States respectively accepted the proposition to receive the *whole*, not a *part;* the *four* installments, not *one* only. The States had a right to regard it, and did regard and accept it as one *entire and indivisible contract*; as a 'unit,' and *to regard the national faith as pledged for the performance of the contract on the part of the United States*."

Mr. Fillmore, of New York, afterwards President of the United States, in the House, on September 25th, 1837, said:

"I am also opposed to this bill, sir, for another reason. Its object and intent is to *violate the plighted faith of this Nation.* I shall not enter into an examination to see whether the offer on the part of the United States, which was acceded to by the State of New York in the manner I have already stated, was or was not a pecuniary contract, according to the strict rules of the common law, which might be enforced in a court of justice. This point has been most fully and eloquently discussed by my colleague immediately in front of me, (Mr. Sibley.) I could add nothing to what he has said on that subject. It is said that the United States has received no consideration for the promise. But, sir, I am disposed to place this question on higher grounds. Does it become this Nation or the American Congress to stand here paltering about the redemption of its plighted faith to one of the daughters of this Union on the ground that it has received no consideration for the promise which it has made? Has this Nation, indeed, sunk so low that it takes shelter from its engagements when it finds it inconvenient to perform them behind the statute of frauds? The reason why a consideration is required to enforce a contract between individuals, does not apply to this case. That is a rule adopted by the courts to protect the inconsiderate and the unwary from the consequences of their own folly in making hasty promises without consideration. But, sir, even as between individuals, if the manner in which the contract has been made evinces a due degree of deliberation, then the courts will enforce it. If, for instance, the contract be sealed, that is regarded as so solemn an act, and evidences such caution and deliberation that the courts, by the common law, preclude all inquiry into the consideration and compel the obligor to perform his contract. This case shows the reason of the rule, and I submit it has no applicability here. Will gentlemen say that Congress was surprised into this promise? That there was not due deliberation had on the subject? Or that the congregated wisdom of this Nation requires such a miserable subterfuge as this to justify to its own conscience the violation of its plighted faith. Sir, was not the contract *sufficiently* solemn? It is among the sacred archives of your Nation. It is of the same high and solemn character with your treaties with foreign nations. Nay, if possible, sir, it is still higher and more obligatory upon the Nation. A treaty is only sanctioned by the President and Senate. This, sir, has been *sealed* with the *national honor* and *attested* by the *national faith* of both branches *of Congress* and the *Executive;* and you may call it contract, compact, or treaty; it is clearly a *promise* by the Nation in the most solemn form that a promise can be made."

John Q Adams, on the 29th of September, 1837, said:

"I consider the whole measure as a violation of the public faith, for which the last administration is responsible to this Nation, to the creditors of this country abroad and to posterity, especially responsible to the people of those States so grossly injured by the withholding from them of this fourth installment of the sum promised them by the act of June, 1836, by the lavish donation of their money to the people of other States, which they now refuse to refund." He further claimed that the balances then due from the late deposit banks were sufficient to pay this installment, saying: "They are the identical moneys announced on the 3d of January last as

being then in the Treasury to be divided among the States under the act of June 23, 1836. They are more than sufficient to pay the whole of the fourth installment."

Mr. Bell, of Tennessee, said:

"The question now is whether the States have not acquired rights, under the act of 1836, which it is not competent for Congress to annul or defeat *without their consent*. It is a question of power and of right in the General Government, whether, after the States have accepted the terms of the deposit act; after many of them have anticipated the funds which they have expected to receive in payment of the fourth installment and made other important arrangements connected with their financial interests and condition, they will not have just cause to complain of a breach of faith, if this Government shall now proceed to abrogate the compact by legislative action merely, and without any communication with the States. I call upon those gentlemen especially who hold to what is called the States' rights' party, to say upon what grounds they can support the bill under consideration. Will it not be a usurpation or clear assumption of power on our part and an insulting disregard of the State sovereignties, if, after deluding them with promises of these funds upon certain conditions, which have been acceded to by the States, we should claim the power to postpone the execution of the *compact* or to annul the whole proceeding unconditionally, without reference to their wishes or interests, and even without consulting them?"

The same views were urged by several others. The original bill that was introduced to do away with the payment of the fourth installment contained no provision for a postponement. Although the then Administration was seeking relief, by the original bill, from the financial difficulties in which it found itself by reason of the unavailability of the funds of the Government to meet the fourth installment, yet, the original bill would have entirely failed, owing to the arguments made against it, had not Mr. Pickens, of South Carolina, by an amendment proposed by him to the original bill, which introduced the postponement feature as afterwards found in the law of October 2d, 1837, saved the measure of relief desired by the then Administration. Even the postponement feature was evidently, passed with the greatest reluctance.

If the 25th Congress for such reasons, with an exhausted treasury, begging for relief, *refused to repeal the act*, as did also the 27th Congress under similar circumstances, what excuse will be given for him, who, now with an overflowing treasury, should propose to abrogate or *disobey* its provisions?

The surplus revenue that the law of 1836 required to be deposited with the States did not arise from taxation derived from the people. It arose from the sales of the public lands.

Mr. King, of Georgia, in Congress, on the 31st of January, 1836, says:

"No plan seemed so effectual and just as the plan that was adopted. This money was in the Treasury; it belonged to the people and was not needed for the public service, and could not be permitted to remain on deposit without great and acknowledged evils. To give the people the use of it, with some regard to equality, until needed for some really national purpose, was certainly the most just to the people, while it was most effectual in avoiding the evils complained of. Not the least evil of leaving this immense surplus on deposit would have been to make it a subject of continual scramble for partial and useless appropriations, in which the least scrupulous would have succeeded best." Mr. King continued: "That this surplus rightly belonged to the people of the States who should be permitted to retain it until wanted for the real purpose of the Government, and no necessity should be created by a measure of injustice. The money had been *raised by the unexpected and unprecedented sales of the public land, and had not, properly speaking, been raised by taxation upon the people.*"

From a speech of Robert J. Walker, of Mississippi, in Congress, on the 14th of January, 1837, it seems that the sales of public lands in 1834, 1835, and 1836, amounted to $49,672,500, much more than all the sales from 1796 to 1834 together. It might be interesting to inquire how much of this came from public lands ceded to the United States by the State of Virginia.

The act of Congress of September 4th, 1841, which provided for the distribution of "the residue of the net proceeds of the sales of the public lands" among the States and Territories of the Union was but the outgrowth of the Deposit act of 1836.

It is very significant that after the failure to make this deposit, as required by law, on January 1st, 1839, and again in January, 1840, and January, 1841, and while, as reported by the Secretary of the Treasury, there was and had been for years no money in the treasury to meet this demand and no immediate prospect of having it there for this purpose, Congress, by its express action in the passage of the law of August 13th, 1841, (5th Statutes at Large, p. 440,) and in excepting therein the 13th and 14th sections of the act of June 23d, 1836, while repealing all the other sections of said last-mentioned act, indicated its determination to continue the requirements of those two sections until they should be obeyed, whenever there should be public funds available for such purpose, and this determination has never been changed.

This action also shows that appropriations by Congress, though they should exhaust funds in the treasury so as not to leave a sufficient amount therein to enable such deposit to be made, were not to be *construed* as operating to *repeal* the requirements, nor as indicating any change in the laws of June, 1836, and October, 1837.

It also recognizes the obligation of the Government to make the *specific* deposit of the amount in the treasury on January 1st, 1837, and the right of the States to the deposit of that *specific* sum to be made, not out of a surplus *after* all other debts and obligations are satisfied, but, in the language of the report of the Secretary of the Treasury, then before Congress, "*whenever a surplus should hereafter accrue large enough, after defraying all the existing charges imposed by Congress upon the treasury.*" There can be no more reason for deferring this requirement or obligation until all debts hereafter to become due shall be satisfied, than for an individual to determine to postpone some selected *accrued* indebtedness until after some debt *not accrued* may be discharged, when he has money in his hands lying idle *sufficient to discharge his present existing debt.*

At the risk of apparent presumption, after presenting the views of the eminent lawyers and statesmen of those times, but hoping not to weaken their force, we venture to suggest further, in our own language:

This money directed to be deposited belonged to the people of the States as well as to the people of the United States. The people of Virginia, for example, had an interest in the whole of the money. They had a right to have the whole of the money applied to the general purposes of the Government.

But in accepting this plan they gave up the right to such use of all the money, except that portion which came to them. In accepting the sum to be distributed to them they consented that any single State should receive the portion coming to it, with no security for its return but the faith of the State. In some respects it was like a mutual division, or partition of common property, which certainly has sufficient consideration to support it, whether executed or executory, or, perhaps, more like the individual members of a corporation, agreeing with it and with each other that there should be a distribution of certain company assets with the individual members, and such distribution having been partially made.

Now, although this transaction is always styled as a deposit, it was not a deposit in the sense of *depositum;* that is, involving an obligation to return the identical thing, or money deposited.

It was like the ordinary deposits made by individuals in bank, which really amounts to nothing more, nor less, than a loan.

It certainly is not a gift, for there is an obligation to return, or rather repay, at the pleasure of the general government.

If there could be a question of adequacy of consideration, then it would be very different from the case of a transfer of the money itself. There was a liability to have this large sum of money returned within a very

short period indeed, and which might have caused the greatest inconvenience. It was substantially a loan on call, in which case the use is of much less value. The market value of a mere tenancy at will is comparatively very small.

But a contract, for even a loan on call, is as valid and binding as any other, especially if there is *any* consideration, or if any liability has been incurred upon the faith of it.

A contract for *use* is as binding as a contract for sale, or transfer, of the actual title, and rests upon the same principles. The contract was that the State could have the use of the money until called for, upon certain contingencies. As said by Caleb Cushing, it was a contract of deposit.

This contract had been partially performed. The State of Virginia had, on the 1st of October, 1837, received $2,198,427.99, and had already loaned it out, or a portion of it, certainly at some risk of its being repaid, when it might be demanded by the Government. On that day, then, a very great liability had been incurred by the State, and then existed, which involved a possibility of great inconvenience and absolute loss, and which has since, in fact, resulted in great loss to the State. Certainly, after this partial performance, by reason of which the State had already become so involved, and had used the money, as it had the right to do, it is too late to say that the proposal and acceptance had no binding obligation for the want of a consideration. In ordinary contracts between individuals, a seal alone imparts a sufficient consideration, not because there is necessarily an actual consideration, but because the act of sealing implies deliberation, caution, and fullness of assent. (1 Parsons on Cont., p. 354 of 2d ed.)

Surely there was about this transaction all the deliberation, caution, and fullness of assent that could have been required. Part of the first three installments, in some of the States, had been made in certificates from local banks, which were depreciated in the market, but received and assumed at their face value. As said by Mr. Fillmore: the United States cannot afford to put itself in the attitude of pleading a want of consideration to this demand. Much less can the officer, whose duty it is to obey the law, be sustained in taking any such position, and raising any such question.

In Dartmouth College vs. Woodward, 4 Wh., p. 518, Washington, J., says:

"What is a contract? It may be defined to be a transaction between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised

by the other. (Powell on Cont., 6.) It is obvious that every feoffment, *gift, grant, agreement, promise,* &c., may be included; because in all there is a mutual consent of the minds of the parties concerned in them, upon an agreement between them respecting some property, or right, that is the object of the stipulation." He adds, "that the ingredients requisite to form a contract are parties, consent, and an obligation to be created or dissolved." "It matters not," says Story in the same case, "how trifling the consideration may be. A peppercorn is as good as a thousand dollars. Nor is it necessary that the consideration should be a benefit to the grantor. It is sufficient if it impart damage, or loss, or forbearance of benefit, *or any act done, or to be done,* on the part of the grantee. It is unnecessary to state cases. They are familiar to the mind of every lawyer." No one can read the elaborate consideration of this subject in this case, where the grant of a charter of incorporation was held to be a contract, and hesitate to regard this transaction—the proposal by the United States, the acceptance by the several States, and the action in pursuance of them—as a contract.

Even the promise of a bare gift, if acted upon in such a way that there would be loss by its not being fully executed, can be enforced by a bill for specific performance. See Emerson vs. Slater, 22 How., 28.

At the rates allowed to depositories by Sec. 3655 R. S. the compensation for *receiving, keeping, and paying out* the sum apportioned to Virginia would be something over $4,000.00. This would more than satisfy the requirement above described by Justice Story.

The making of this deposit would be only a recognition of the fact, that the Treasurers of the States are the lawful depositories of public money, in a sense similar to the Assistant Treasurers, or National Banks, in which money may now be deposited, at the discretion of the Secretary, with certain restrictions only, imposed by law. As depositories we have had the U. S. Bank and its branches, local banks, selected by the Executive, the Sub-Treasury system, National Banks, and the State treasuries, the last being as well authorized, as a place of deposit, as any other. The same act that established these as depositories also established the authority to deposit in local banks. And it is noteworthy that, in 1841, when all other systems seemed to have been deemed unsatisfactory, when the U. S. Bank had, with its branches, all gone down, in 1836, having, before that, lost the confidence of the President, and Congress refusing to renew its charter and the authority to deposit in local banks, and the Sub-treasury was repealed, these depositories were expressly reserved; and there has since been no legislation affecting them as legitimate depositories of the public money. Henry Clay, in offering the bill of repeal in 1841, said, as re-

be allowed to be deposited with such banks, by which it would find its way into the currents of business in loans and discounts. While, however, this might aid business to some extent, it would not diminish the amount of surplus of public money.

This plan, too, is liable to the charge of unequal operation. It would benefit such banks and the localities in which such banks might be situated, but would justly be said to benefit only rich corporations, and the richer portions of the country.

What, then, is to be done with this vast amount of money, drained from every part of the country and from every individual in it?

Such was the problem presented to the statesmen of 1836 in relation to the then existing surplus, and the sections of the act upon which we rely was the solution. We believe that a wise statesmanship would bring out the same solution now.

As early as 1790, Hamilton recommended the assumption of the State debts by the Federal Government, and following such recommendation Congress *did* assume such debts to the amount of $21,000,000. We have before quoted the recommendation of President Jackson, in his message to Congress in 1829, of an apportionment of the surplus among the several States according to the ratio of their representation. The act of 1836 was approved by him. John C. Calhoun was one of the special advocates of this bill, believing, as he said, that such a measure would tend to bring about the most cordial and proper relations between the Federal and the State governments.

In 1832, Henry Clay advocated the distribution of the revenue coming from the public lands, as follows:

"The States are in want of, and can use most beneficially, that very surplus with which we do not know what to do. The powers of the General Government are limited, those of the States ample. If these limited powers authorized an application of the fund to same objects, perhaps there are others of more importance to which the powers of the States would be more competent, or to which they may apply a more provident care. But the government of the whole, and of the parts, is but one government of the same people. In form they are two; in substance, one. They both stand under the same obligation to promote by all the powers with which they are respectively entrusted, the happiness of the people, and the people in turn owe respect and allegiance to both. Maintaining these relations, there should be mutual assistance to each other afforded by these two systems. When the States are full-handed, and the coffers of the General Government are empty, the States should come to the relief of the General Government, as many of them did, most promptly and patriotically, during the late war. When the conditions are reversed, as is now the case, the States wanting what is almost a burden to the General Government, the duty of this Government is to go to the relief of the States."

The form of our Government is peculiar. We have a federal government and local governments. Generally, while the government of a country has all the burden of the expenses of administration of public works, public jails, hospitals, asylums, charities, education of the people, expenses of courts, criminals, and all those cares which pertain to such governments, they also have all the resources of revenue to meet such burdens. But in this country almost all these expenses, at least in time of peace, are borne by the local governments and municipalities. In criminal cases, for example, the proportion in the State courts to those of federal courts, is probably more than a thousand to one. The General Government gives us the post office, but every stamp is a tax upon the person who uses it to support it, and it is nearly self-sustaining. It gives us the patent office, but this is more than supported by the inventors. It administers the public lands, but a large portion of these were given by the States themselves, and are a source of revenue instead of expense.

It supports its own courts, whose jurisdiction is limited, mostly to cases arising under the United States laws. It provides the Army and Navy, but these need not be comparatively very expensive in ordinary times. But all these are but a small part of the real burdens and expenses of government.

The federal government scarcely touches the life of the common people in such a way that they realize its benefits, except through the post office, which is directly supported by them.

While this is so, we find that the General Government has all the most fruitful sources of revenue. It owns all the public lands. It has the exclusive power to levy taxes upon imports, out of which alone was raised, in 1882, the sum of $220,410,730.25.

It has the power to raise an almost unlimited revenue from direct taxes, which, upon the few articles upon which it was levied, realized, in 1882, $146,523,275.72, and the whole revenue being over $400,000,000 during that year. It is manifest that the proportion between the needs and resources of the federal and local governments, is vastly in favor of the former.

The sources of revenue of the States are exceedingly limited. If a State attempts to tax business or manufactures, it only tends to drive such business and manufactures from the State itself.

The principal resources of State and municipal governments arise from direct taxes upon real estate, and to a limited extent, upon personal property. This is directly felt, and is exceedingly onerous and oppressive.

The present situation is the necessary result of these things. While the federal government is literally rolling in wealth, its surplus becoming of enormous proportions, States and municipalities are groaning under the burden of heavy debts which they can scarcely pay, which are still accumulating, which heavily oppress their citizens and almost force them to compromise with their creditors, bankruptcy or repudiation. In 1880 the acknowleded debts of the States amounted to $284,170,426, and the debts of cities to $687,096,460, besides the debts of counties and townships.

Now, the proposed distribution would certainly bring great relief to such overburdened States and municipalities and their citizens, and why should it not be made? What can be a possible objection to it? A citizen of a State is called upon by the tax collector to pay a direct tax of say $100. That same citizen has an ownership in an immense sum of money lying idle in the Treasury. Would it not be a great relief if some of that money could be drawn from the Treasury and applied to the payment of this direct tax upon him, or to the debt which calls for such payment? Would not the creditors of States, now too poor to meet their obligations, rejoice in their being furnished the means to enable them to pay such demands? Hundreds of thousands of citizens of the United States are growing up in the most appalling ignorance because their poor States cannot furnish money for their education, the most fruitful sources of revenue being monopolized by the General Government, which holds in its hands hundreds of millions of money belonging to these same citizens, with which it knows not what to do. Why not allow some of this money to be used to educate these? Why not allow the States to improve their highways and their inland navigation with some of this money, well as to have it expended by United States officers through the river and harbor bills and other bills of a kindred character, which have been charged with such extravagance and corruption?

There was some controversy in 1836 and 1837 as to whether the distribution contemplated should be confined to the then existing surplus, or whether there should be a permanent system of such distribution. It is manifest, from a perusal of the debates at that time, that had there continued to be a substantial surplus, a permanent system would have been established. In presenting a petition from the citizens of North Carolina in Congress in December, 1836, W. B. Shepherd, of North Carolina, said:

"To the southern country the distribution of the surplus revenue offers the only practicable mode of obtaining any share whatever in the enormous appropriations of public money, which are made at every session of Congress."

On the 21st of December, 1836, Mr. Calhoun introduced the following bill:

"*Be it enacted, &c.*, That the money which shall be in the Treasury on the first day of January, 1838, reserving the sum of five millions of dollars, shall be deposited with the several States on the terms and according to the provisions of the 13th and 14th and 15th sections of the act to regulate the deposits of the public money, approved the 23d day of June, 1836."

In making an elaborate argument in its favor, he said:

"One point was perfectly established by the proceedings of the last session, that when there was an unavoidable surplus, it ought not to be left in the Treasury or in the deposit banks, but should be deposited with the States. It was not only the most safe, but the most just, that the States should have the use of the money in preference to the banks. This, in fact, was the great and leading principle which lay at the foundation of the act of last session—an act that would forever distinguish the 24th Congress—an act which will go down with honor to posterity, as it had obtained the almost unanimous approbation of the present day. The passage had inspired the country with new hopes. It had been beheld abroad as a matter of wonder, a phenomonon in the fiscal world, such as could have sprung out of no institutions but ours, and which went in a powerful and impressive manner to illustrate the genius of our Government."

A failure to establish such system, then, was no doubt one of the great causes that produced such a revolution in public sentiment, that resulted in turning the Democratic party out of power and in the election of Gen. Harrison in 1840. In 1842 the tariff was twice passed by Congress with a provision making the distribution of the surplus as a permanent feature of our fiscal policy; but this was vetoed by President Tyler, and could not be passed over such veto without a removal of this provision. At that time, however, the demand for such a provision did not have for its basis anything like the present situation.

This idea of distribution, it will be seen, then, however novel it may at first thought appear, has been a familiar one with the statesmen and with the people at various periods in our history.

It is only necessary that the people should become familiar with this idea to cause them to demand such policy now.

If the deposit of this fourth installment should be made, it would be against all our ideas of the laws which regulate human conduct to imagine that all the remainder of the twenty-six States would not at once ask for the deposit coming to them, or would at least receive it if offered. Not one hesitated in 1836.